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Thursday
March 23, 1989

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

PHILADELPHIA, PA

WHEN: March 30, at 1:00 p.m.
WHERE: 841 Chestnut Street, Room 705, Philadelphia, Pa
RESERVATIONS: Call the Philadelphia Federal Information Center
Philadelphia: 215–597–1709
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WASHINGTON, DC

WHEN: April 11, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

SALT LAKE CITY, UT

WHEN: April 12, at 9:00 a.m.
WHERE: State Office Building Auditorium, Capitol Hill, Salt Lake City, UT
RESERVATIONS: Call the Utah Department of Administrative Services, 801–538–3010

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

Wheat Crop Insurance Endorsement; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Correction of notice.

SUMMARY: On Wednesday, March 15, 1989, the Federal Crop Insurance Corporation (FCIC) published a notice clarifying the sales period for wheat in certain counties in South Dakota. The notice carried an incorrect caveat with respect to the proviso that an adequate stand of wheat must exist before insurance under the Wheat Crop Insurance Endorsement, without the Winter Wheat Option, is effective. The applicable portion of the notice is herewith republished in its entirety to corect that error.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: The notice clarifying the sales period for wheat in certain South Dakota counties, published at 54 FR 10621, announced that the Wheat Crop Insurance Endorsement would be available without the winter wheat coverage option, until April 15, 1989, and required that an adequate stand of wheat existed for fall-seeded wheat on that date. The statement should have referred to there being an adequate stand on the spring final planting date. The applicable portion of the notice is herewith republished in its entirety to correct that error:

For purposes of clarification, wheat crop insurance under the provisions of the Wheat Crop Insurance Endorsement (7 CFR 401.101), but without the winter wheat coverage option, is available until April 15, 1989, provided an adequate stand exists on the spring final planting date. The sales closing date for spring-seeded wheat is April 15, 1989. This clarification pertains only to the following South Dakota Counties:

Bennett	Hand	Pennington
Brule	Harding	Perkins
Buffalo	Hughes	Potter
Butte	Hyde	Shannon
Charles Mix	Jackson	Stanley
Custer	Jones	Sully
Dewey	Lawrence	Todd
Fall River	Lyman	Tripp
Gregory	Meade	Ziebach
Haakon	Mellette	

Done in Washington, DC, on March 20, 1989.

David W. Gabriel,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89–6923 Filed 3–22–89; 8:45 am]
BILLING CODE 3410–08–M

7 CFR Part 405

[Amdt. No. 2 Doc. No. 6746S]

Apple Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the **Federal Register** on Monday, November 21, 1988, at 53 FR 46845, revising and reissuing the Apple Fresh Fruit Option and the Pilot Sunburn Option (7 CFR Part 405). In that publication, an error has been noted with respect to the use of sunburn as a cause of loss and the omission of hail as tandem cause of loss. The net effect of this error is to possibly mislead the insured as to correct coverage of the option since a basic apple crop insurance policy and an Apple Fresh Fruit Option B must be in force before an Apple Sunburn Option may be secured. The basic apple crop insurance policy lists hail as a cause of loss. It was the intent of FCIC to include hail and sunburn as joint causes of loss in issuing the Apple Sunburn Option. In addition, the term "sunburn" should have read "excessive sun" and been coupled with hail damage to reflect the cause of loss. This notice is published to correct those errors.

EFFECTIVE DATE: March 23, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: FR Doc. 88–26854, appearing at page 46845 is corrected as follows:

Beginning on page 46847, paragraph 5 is correctly revised to read as follows:

§ 405.9 Apple sunburn option.

* * * * *

5. In lieu of sections 9.e.(1), 9.e.(2), 17.1, and 17.q. of the Apple Policy, the total production to be counted for a unit must include all harvested and appraised production. Harvested apple production which, due solely to excessive sun or along with hail damage, does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards, will be adjusted as follows:

a. Production with 21 thru 40 percent not grading U.S. Fancy or better due solely to excessive sun or along with hail damage will be reduced 2 percent for each percent in excess of 20 percent. The difference between the reduced production and the total production will be considered cull production.

b. Production with 41 thru 50 percent not grading U.S. Fancy or better due solely to excessive sun or along with hail damage will be reduced 40 percent plus an additional 3 percent for each percent in excess of 40 percent. The difference between the reduced production and the total production will be considered cull production.

c. Production with 51 thru 64 percent not grading U.S. Fancy or better due solely to excessive sun or along with hail damage will be reduced 70 percent plus an additional 2 percent for each percent in excess of 50 percent. The difference between the reduced production and the total production will be considered cull production.

d. Production with 65 percent or more not grading U.S. Fancy or better due solely to excessive sun or along with hail damage will be considered 100 percent cull production.

Fifteen (15) percent of all cull production, will be counted as production.

* * * * *

Done in Washington, DC on March 17, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-6797 Filed 3-22-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 692, Amdt. 1]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 692, Amendment 1, increases the quantity of California-Arizona navel oranges that may be shipped to market during the period March 17 through March 23, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 692, Amendment 1, (§ 907.992) is effective for the period March 17 through March 23, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456. Telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This amendment is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988-89 adopted by the Navel Orange Administrative Committee (Committee). The Committee conducted a telephone vote on March 17, 1989, to consider the current and prospective conditions of supply and demand and recommended, by a nine to one vote (with one abstention), an increase in the quantity of navel oranges deemed advisable to be handled in District 1 and District 2 during the specified week. The Committee reports that demand for navel oranges has increased.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.992 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.992 Navel Orange Regulation 692, Amendment 1.

The quantity of navel oranges grown in California and Arizona which may be handled during the period March 17, 1989, through March 23, 1989, is established as follows:

(a) District 1: 1,848,000 cartons;
(b) District 2: 252,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: unlimited cartons.

Dated: March 17, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-6864 Filed 3-22-89; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; Correction.

SUMMARY: SBA is correcting a typographical error which appeared in regulations regarding the development company loan program published in the **Federal Register** on February 9, 1989 (54 FR 6265).

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, Office of Economic Development, Small Business Administration, 1441 L Street NW., Room 720-A, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Public Law 100-590, the Small Business Administration Reauthorization and Amendments Act of 1988, required several amendments to SBA's Development Company regulations, 13

CFR Part 108. Such regulations were published in the **Federal Register** on February 9, 1989. The omission of a period was discovered in that regulation which SBA is now correcting.

The following correction is made to Part 108 of Title 13, Code of Federal Regulations, Loans to State and Local Development Companies, published in the **Federal Register** on February 9, 1989 (54 FR 6265):

§ 108.506 [Corrected]

In § 108.506, in the first clause beginning with the italicized word "Provided" a period should be added between the words "provided" and "on" and the letter "o" in the word "on" should be capitalized.

Dated: March 13, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-6873 Filed 3-22-89; 8:45 am]

BILLING CODE 8025-01-M

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13 CFR Part 142

Program Fraud Civil Remedies Act Regulations; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; Correction.

SUMMARY: The Small Business Administration (SBA) is correcting an error in § 142.4(c) of the Program Fraud Civil Remedies Act regulations which appeared in the **Federal Register** on February 9, 1989. (54 FR 6271.)

FOR FURTHER INFORMATION CONTACT: Patricia R. Forbes, Chief Counsel for Legislation, Small Business Administration, 1441 L Street NW., Room 722, Washington, DC 20416, (202) 653-6573.

SUPPLEMENTARY INFORMATION: On February 9, 1989 SBA published in the **Federal Register** a final rule to enact the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801. (54 FR 6271.) Section 142.4(c) of such rule is being corrected to preclude any possible misunderstanding regarding the optional use of a subpoena under the Inspector General Act rather than the Program Fraud Civil Remedies Act. The SBA Office of Inspector General has authority under the Inspector General Act to issue subpoenas in many of the same situations in which subpoenas are authorized under the Program Fraud Civil Remedies Act. This correction is to make clear that if the Inspector General issues a subpoena under the authority of the Inspector General Act, he or she is not thereby precluded from bringing charges against a party under the Program Fraud Civil Remedies Act.

The following correction is made to Part 142 of Title 13, Code of Federal Regulations, Program Fraud Civil Remedies Act regulations, published in the **Federal Register** on February 9, 1989 (54 FR 6271):

§ 142.4 [Corrected]

Section 2.4(c) is amended by deleting the word "or" following the words "other civil relief," and by adding the words ", or to issue a subpoena under other statutory authority" after the word "prosecution" and before the period.

Dated: March 14, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-6872 Filed 3-22-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-34-AD; Amdt. 39-6166]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Boeing Model 747 series airplanes by individual telegrams. This AD supersedes an existing AD that currently requires certain manual and/or electrical tests; inspections and repair, if necessary; and modifications of the lower lobe forward and aft cargo doors. This AD revises the currently required operating procedures and the interim inspections and tests; reduces the compliance time for the modification; and adds a requirement for the installation of certain placards. This action is prompted by a recent accident in which an explosive depressurization of an airplane may have been caused by the forward lower lobe cargo door opening during flight.

DATES: Effective April 3, 1989.

This AD was effective earlier to all recipients of telegraphic AD T89-05-54, dated March 3, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Airframe Branch, ANM-120S; telephone (206) 431-1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-698966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On March 3, 1989, the FAA issued Telegraphic AD T89-05-54, applicable to Boeing Model 747 series airplanes, which supersedes AD 88-12-04, Amendment 39-5934 (53 FR 18079; May 20, 1988), to require inspections of certain cargo doors' locking mechanisms, and repair, if necessary; certain manual and/or electrical tests; the addition of certain operating procedures; installation of placards; and a revision of the compliance time for certain currently-required modifications of the lower lobe forward and aft cargo doors.

That action was prompted by a recent accident where a Model 747 airplane experienced an explosive depressurization of the airplane, which may have been caused by the forward lower lobe cargo door opening in flight. Although the cause of this accident has not been determined, the FAA has determined that an acceleration of the compliance time currently required by AD 88-12-04 for installation of the modifications of the cargo doors, as well as additional inspections and tests in the interim, are necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, this airworthiness directive (final rule) is issued to supersede AD 88-12-04 to require certain operating procedures to be accomplished when operating the cargo doors, including confidence checks of the cargo doors' mechanical and electrical systems; and inspections of the door locking mechanisms, and repair, if necessary. This final rule also accelerates the schedule for modifications to the lower lobe forward and aft cargo doors.

The additional tests will ensure proper function of the mechanical lock system, as well as verify the integrity of the electrical system. The additional inspections required will provide a positive indication of a fully latched door, independent of the electrical warning system.

Paragraph B.2. of this final rule has been revised to clarify that airplanes which fail mechanical and/or electrical tests must be repaired prior to further flight, in accordance with FAA-approved procedures. This requirement was included in existing AD 88-12-04, but was inadvertently omitted in Telegraphic AD T89-05-54.

The visual verification requirement of paragraph C.1. of this final rule is considered an interim measure, pending the development of design modification to the door warning system. The FAA may consider further rulemaking to address this modification when it is available.

Note.—This AD references certain portions of Boeing service bulletins for applicability, inspections procedures, and modification. In addition, this AD requires certain inspection and test requirements beyond those included in the Boeing service bulletins. Where there are differences between the AD requirements and the service bulletin procedures, the AD prevails.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 88-12-04, Amendment 39-5934 (53 FR 18079; May 20, 1988), with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line number 001 and subsequent certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent opening of lower lobe forward and aft cargo doors, accomplish the following:

A. Within the next 10 days after the effective date of this AD, install Boeing placards, P/N 27EBY115 for hook operation, and P/N 27EBY114 for latch operation, or equivalent, adjacent to the respective drive ports.

B. Except for airplanes that have been modified in accordance with the Boeing service bulletins specified in paragraph D., below, or on which a production equivalent has been installed, within the next 10 days after the effective date of this AD, accomplish the following:

1. Visually inspect for broken, bent, or otherwise damaged lock sectors which could affect the integrity of the door locking mechanism, and repair or replace damaged sectors prior to further flight, in accordance with FAA-approved procedures. This inspection must be repeated at intervals not to exceed 30 days, and after the next door opening following each manual operation of the door.

2. Conduct the mechanical and electrical system tests specified in Boeing Service Bulletin 747-52A2206, Revision 3 or Revision 4, paragraphs III.A. and B. Airplanes which fail mechanical and/or electrical tests must be repaired prior to further flight, in accordance with FAA-approved procedures. Repeat these tests at intervals not to exceed 30 days and repeat the electrical test after restoration of electrical power following manual operation.

C. Within the next 14 days after the effective date of this AD, change the operating procedures for the lower lobe cargo door to include the requirements specified below, and thereafter comply with those revised procedures. The procedures required by this paragraph must be accomplished by qualified and trained mechanics, and the training program must be approved by the FAA Principal Maintenance Inspector (PMI). Methods for documentation of compliance with these procedures must be approved by the FAA PMI.

1. Prior to takeoff following each operation of the door, conduct a visual verification, through the external viewports, to ensure proper engagement of the latching cams to ensure the door is fully latched closed. This information must be relayed to and acknowledged by the flight crew.

2. When operating the door manually, the cranking torque shall not exceed 70 inch-pounds, and power tools shall not be used to operate latch and hook mechanisms in the manual mode.

D. Within the next 30 days after the effective date of this AD, accomplish the following:

1. For those airplanes specified in Boeing Alert Service Bulletin 747-52A2206, Revision 3, dated August 27, 1987, or Revision 4, dated April 14, 1988, modify the doors in accordance with paragraphs III.H. through III.O. of the applicable revision of the service bulletin.

2. For those airplanes specified in Boeing Alert Service Bulletin 747-52A2209, dated August 27, 1987, or Revision 1, dated April 14, 1988, modify the doors in accordance with paragraphs III.E. through III.L. of the applicable revision of the service bulletin.

Accomplishment of these modifications constitutes terminating action for the repetitive requirements of paragraph B., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This supersedes AD 88-12-04, Amendment 39-5934.

This amendment becomes effective April 3, 1989.

This AD was effective earlier to all recipients of telegraphic AD T89-05-54, dated March 3, 1989.

Issued in Seattle, Washington, on March 14, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-6805 Filed 3-22-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-64-AD; Amdt. 39-6168]

Airworthiness Directives; Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, which requires supplemental structural inspections, and repair or replacement, as necessary, to assure continued airworthiness. This amendment is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks. Fatigue cracks in these areas, if not detected and corrected, could result in a reduction of the structural integrity of these airplanes.

EFFECTIVE DATE: May 4, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Fokker Model F-27 series airplanes, which requires supplemental structural inspections, and repair or replacement, as necessary, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on June 13, 1988 (53 FR 22020).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter, Fokker Aircraft B.V., stated that, contrary to what was indicated in the preamble to the NPRM, the Structural Integrity Program (SIP) was not developed to address problems associated with aging aircraft. Therefore, the commenter requested that the NPRM be withdrawn. Upon further review, the FAA concurs with the commenter's observation, but, as discussed below, only partially concurs with the commenter's request.

With regard to Part I of the SIP, the commenter stated that, while it describes maintenance procedures relating to anticipated fatigue and stress corrosion, Part I is referenced on the latest issue of the type certificate data sheet (TCDS) and is, therefore, already mandatory for all operators. The FAA does not concur. The only references on a TCDS that are mandatory are those that appeared on the TCDS at the time of type certification; subsequent revisions are not mandatory in and of themselves. Therefore, the FAA has determined that the AD is necessary in order to make Part I of the SIP mandatory with respect to airplanes type certificated previously.

With regard to Part II of the SIP, the commenter stated that it contains merely normal routine maintenance procedures and was not intended to address a specific unsafe condition. The FAA concurs. The final rule has been revised to withdraw the requirement for accomplishment of the provisions of Part II of the SIP.

Fokker further suggested that the final rule be revised to incorporate the wording, "Structural Integrity Program Part I, Document No. 27438, *the latest revision* * * *," in all references to that document. The FAA does not concur. Since service bulletins issued by foreign manufacturers and revisions thereto are not subject to approval by the FAA, use of such a phrase would be inappropriate. Furthermore, reference in AD's to future service bulletins is contrary to FAA policy.

The FAA has determined that the final rule must be revised to limit the applicability to the Fokker F-27 Model Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, since these are the only airplanes affected by the requirements of this AD. This change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 38 airplanes of U.S. registry will be affected by this AD. Implementation of the Part I of the SIP into an operator's maintenance program is estimated to require 225 manhours per airplane, at an average labor cost of $40 per manhour (approximately $9,000 per airplane). The recurring inspections are estimated to require approximately 138 manhours per airplane at an average labor cost of $40 per manhour ($5,520 per airplane). Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $342,000 to initially implement Part I, and $209,760 per year thereafter.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any Model F-27 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, all serial numbers, certificated in any category. Compliance required as indicated in the body of the AD, unless previously accomplished.

To ensure the structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for inspection of the Significant Structural Items defined in Fokker Document No. 27438 Part I, revised February 1, 1987. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to Fokker, in accordance with the instructions of the above document.

B. Cracked structure detected during the inspection required by paragraph A., above, must be repaired or replaced, prior to further flight, in accordance with instructions in Document No. 27438, revised February 1, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 4, 1989.

Issued in Seattle, Washington, on March 15, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-6806 Filed 3-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-65-AD; Amdt. 39-6170]

Airworthiness Directives; Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 series airplanes, which requires supplemental structural inspections, and repair or replacement, as necessary, to assure continued airworthiness. This amendment is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks. Fatigue cracks in these areas, if not detected and corrected, could result in reduced structural integrity of these airplanes.

EFFECTIVE DATE: Effective May 4, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Fokker Model F-28 series airplanes, to require supplemental structural inspections, and repair or replacement, as necessary, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on June 13, 1988 (53 FR 22018).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters, Fokker Aircraft B.V. and Piedmont Airlines, stated that, contrary to what was indicated in the preamble to the NPRM, the Structural Integrity Program (SIP) was not developed to address problems associated with aging aircraft. Therefore, the commenters requested that the NPRM be withdrawn. Upon further review, the FAA concurs with the commenters' observation, but, as discussed below, only partially concurs with the commenter's request.

With regard to Part I of the SIP, Fokker stated that, while it describes maintenance procedures relating to anticipated fatigue and stress corrosion, Part I is referenced on the latest issue of the type certificate data sheet (TCDS) and is, therefore, already mandatory for all operators. The FAA does not concur. The only references on a TCDS that are mandatory are those that appeared on the TCDS at the time of type certification; subsequent revisions are not mandatory in and of themselves. Therefore, the FAA has determined that the AD is necessary in order to make Part I of the SIP mandatory with respect to airplanes type certificated previously.

With regard to Part II of the SIP, Fokker stated that it contains merely normal routine maintenance procedures and was not intended to address a specific unsafe condition. The FAA concurs. The final rule has been revised to withdraw the requirement for accomplishment of the provisions of Part II of the SIP.

Fokker further suggested that the final rule be revised to incorporate the wording, "Structural Integrity Program Part I, Document No. 28438, *the latest revision* * * *," in all references to that document. The FAA does not concur. Since service bulletins issued by foreign manufacturers and revisions thereto are not subject to approval by the FAA, use of such a phrase would be inappropriate. Furthermore, reference in AD's to future service bulletins is contrary to FAA policy.

The FAA has determined that the final rule must be revised to limit the applicability to the Fokker F-28 Model Mark 1000, 2000, 3000, and 4000 series airplanes, since these are the only airplanes affected. This change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 51 airplanes of U.S. registry will be affected by this AD. Implementation of Part I of the SIP in an operator's maintenance program is estimated to require 430 manhours per airplane, at an average labor cost would be $40 per manhour ($17,200 per airplane). The annual recurring actions are estimated to require an average of 430 manhours per airplane, at an average labor cost of $40 per manhour ($17,200 per airplane). Based on these figures, the yearly cost to U.S. operators is estimated to be $877,200 the first year, and $877,200 annually thereafter.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model F-28 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to all Model F-28 Mark 1000, 2000, 3000, and 4000 series airplanes, certificated in any category. Compliance required as indicated in the body of the AD, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for inspection of the Significant Structural items defined in Fokker Document No. 28438, Part I, dated March 1, 1982, and Revision 6, dated March 20, 1986. The non-destructive inspection techniques referenced Fokker Document No. 28438 provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to Fokker, in accordance with the instructions of the above document.

B. Cracked structure detected during the inspections required by paragraph A., above, must be repaired or replaced, prior to further flight, in accordance with instructions in Document No. 28438, dated March 20, 1986.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 4, 1989.

Issued in Seattle, Washington, on March 15, 1989.

Leroy A Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-6807 Filed 3-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-121-AD; Amdt. 39-6169]

Airworthiness Directives; McDonnell Douglas DC-9 Series, Model DC-9-80 Series, Model MD-88, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas DC-9, DC-9-80, MD-88, and C-9 (military) series airplanes, which requires a revision to the FAA-approved Airplane Flight Manual (AFM) to add a preflight check of center tank fuel pumps. This action is prompted by reports of dual fuel pump failures. If a single pump failure were to go undetected, failure of the second pump could occur, at which time the remaining fuel, if in the center tank, would be trapped and could result in fuel starvation of one or both engines.

EFFECTIVE DATE: May 4, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Richmond, Flight Test Pilot, Flight Test Branch, ANM-160L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring St., Long Beach, California 90806-2425; telephone (213) 988-5366.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive applicable to McDonnell Douglas Models DC-9, DC-9-80, MD-88, C-9 (military) series airplanes, which requires a revision to the FAA-approved Airplane Flight Manual (AFM) by adding a mandatory preflight check of all fuel pumps, was published in the **Federal Register** on November 21, 1988 (53 FR 46876).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter stated that the proposed rule should not be adopted because it mandates checking the fuel pumps, taking away an individual operator's flexibility. Because of the demonstrated reliability of the fuel pumps, this commenter felt that the proposed mandatory checks are not warranted. Moreover, this commenter pointed out that fuel pump failures will be detected by the crew through flight progress monitoring. The FAA disagrees

with this commenter. Although the pumps have demonstrated high reliability, two instances of dual center pump failures have demonstrated that a single failure can go unnoticed until a second failure occurs. There is no positive way to monitor individual fuel pump status, and the fuel system can operate normally with the failure of any single pump. However, if a second center tank pump should fail, all remaining fuel in the center tank would be trapped.

Three commenters did not disagree with the concept of checking the fuel pumps but indicated that checking all pumps before each engine start was not necessary. One wanted to avoid the power surges on the pumps, which that commenter alleged could contribute to premature failure of the pumps. Another commented that checking the center tank fuel pumps whenever center tank fuel is present should satisfy the concerns raised, since only center tank fuel would be trapped following a dual failure; the main tank fuel will suction feed. The FAA agrees that a check prior to every engine start is not necessary. A check prior to engine start for each flight where center tank fuel is present and will be needed for that route segment is adequate to satisfy the FAA's concerns. The proposed AD has been revised accordingly.

One commenter was agreeable to the proposed rule, but requested that the FAA specify how the check is to be performed. This commenter preferred only to verify that the fuel low pressure light did not illuminate when any single pump is pressurizing the manifold. The FAA agrees that the procedure must be specified. The FAA has determined that the fuel pressure low light(s) must be illuminated before a pump is turned on to positively ensure the satisfactory operation of a fuel pump. A note excluding the requirement to check center pumps on installations with a fuel pump low pressure warning system has also been included. The wording of the final rule has been revised to clarify the procedure.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will not increase the economic burden on any operator, nor will they increase the scope of the AD.

There are approximately 1,500 Model DC–9 series, Model DC–9–80 series, Model MD–88, and C–9 (military) series airplanes in the worldwide fleet. It is estimated that 824 airplanes of U.S. registry will be affected by this AD. The required actions would not require expenditure of any significant amount of funds to accomplish.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of minimal cost of compliance per airplane. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to all Model DC–9 series, Model DC–9–80 series, Model MD–88, and C–9 (military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect center tank fuel pump failures, accomplish the following:

A. Within 10 calendar days after the effective date of this AD, revise the limitations Section of the FAA-approved Airplane Flight Manual (AFM) to add the following, and provide to flight crews. This may be accomplished by inserting a copy of this AD in the AFM:

Section 1—Limitations

Fuel Management

Add the following wording at the beginning of this section:

"Prior to engine start on any flight where center tank fuel is present and will be needed for that route segment, the center tank fuel pumps must be individually checked to verify pump operation. This must be accomplished by observing that both inlet fuel pressure low lights extinguish when each individual center tank pump is activated.

Note: Center tank pumps on aircraft with a center tank fuel pump low pressure warning system installed are not required to be checked in accordance with these procedures."

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Operations Inspector (POI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

This amendment becomes effective May 4, 1989.

Issued in Seattle, Washington, on March 15, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–6804 Filed 3–22–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 88–AWP–13]

Alteration of Jet Route J–5; Los Angeles, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the description of Jet Route J–5 located in the vicinity of Los Angeles, CA. J–5 is currently not used in this area because it conflicts with J–50 and J–65 southeast of the Shafter, CA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC). This action aligns a portion of J–5, via J–50 and J–65, to the new LANDO intersection and then proceeds direct to Los Angeles. This action improves flight planning.

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence

Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On September 23, 1988, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Route J-5 between Los Angeles, CA, and Shafter, CA (53 FR 36996). The current J-5 is not used in this area due to conflictions in the Shafter area. This action improves flight planning. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations changes the description of Jet Route J-5 located in the vicinity of Los Angeles, CA. Currently J-5 is not used in this area because it conflicts with J-50 and J-65 southeast of the Shafter, CA, VORTAC. The change aligns a portion of J-5, via J-50 and J-65, to the new LANDO intersection and then proceeds direct to Los Angeles. This action improves flight planning.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-5 [Revised]

From Los Angeles, CA; INT Los Angeles 352° and Shafter, CA, 140° radials; Shafter; Mustang, NV; Lakeview, OR; Seattle, WA; to Vancouver, BC. The airspace within Canada is excluded.

Issued in Washington, DC, on March 13, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-6808 Filed 3-22-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 87-AGL-24]

Alteration and Establishment of Jet Routes; Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Route J-18 and establishes J-232 in the vicinity of Rockford, IL. This action alleviates air traffic congestion in and around the Chicago O'Hare International Airport terminal area, reduces en route and terminal delays, saves fuel, and reduces controller workload.

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On June 14, 1988, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of V-128 and J-18 and establish J-232 in the vicinity of Rockford, IL (53 FR 22183). However, V-128 has been removed because it was unable to pass flight check procedures. This action alleviates traffic congestion and compression in the Chicago O'Hare International Airport terminal area, reduces en route and terminal delays, saves fuel, and reduces controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, and the removal of V-128, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters J-18 and establishes J-232 in the vicinity of Rockford, IL. This action alleviates air traffic congestion in and around the Chicago O'Hare International Airport terminal area, reduces en route and terminal delays, saves fuel, and reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–18 [Amended]

By removing the words "St. Joseph, MO; Bradford; to Joliet, IL." and substituting the words "St. Joseph, MO; to Moline, IL."

J–232 [New]

From Moline, IL; to Kirksville, MO.

Issued in Washington, DC, on March 13, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–6809 Filed 3–22–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 18, 24 and 123

[T.D. 89–41]

Seals on Railcars

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends § 123.33, Customs Regulations by eliminating the requirement that green in-transit seals be placed on rail shipments prior to their departure from Canada when the movement will be in-bond through the United States for return to Canada. The document also amends other sections of the Customs Regulations which refer to the section which is being eliminated. The requirement that these seals be used in all in-bond shipments from Canada through the United States was significantly modified by recent Customs Directives which permit the use of commercial shipper seals, or other accepted seals on such shipments. These changes are being made to conform the regulations to existing law or practice. They are nonsubstantive and essentially are procedural.

EFFECTIVE DATE: March 23, 1989.

FOR FURTHER INFORMATION CONTACT: Michele Struzzieri, Entry Rulings Branch (202–566–5856).

SUPPLEMENTARY INFORMATION:

Background

In response to inquiries from the public, and as part of a continuing program to keep its regulations current, the Customs Service has determined that certain of its regulations creating the requirement that in-transit seals be placed on rail cars prior to their departure from Canada are no longer required.

This decision was reached after reviewing Customs Directives which have been issued in recent years. Customs Directive No. 3270–02, dated June 11, 1985, addressed the sealing requirements for containerized cargo transported under Immediate Transportation procedures. That Directive mandates sealing for cargo moving only under Immediate Transportation entries. Selective sealing was permitted for those Immediate Transportation shipments which remained in the custody of the bonded landbridge carrier, or an air-carrier using TACM procedures.

This was superseded by a subsequent Customs Directive, 3270–04, dated November 10, 1987, which further delineated the Customs position on seals. This directive permits carriers participating in the Automated Manifest System (AMS) to move in-bond shipments under shipper's seals provided the seal number(s) is/are available within AMS. This directive also provides guidance and direction to District Directors and Customs personnel responsible for carrying out the procedures to be followed for such shipments.

In order to accurately reflect current U.S. Customs policy regarding sealing requirements of railcars transiting the United States, it has been determined that it has become necessary to revise the Customs Regulations. Insofar as the regulations address specific types of seals and procedures, the following changes to the Customs Regulations are deemed necessary.

Green seals which had been required by § 123.33 (19 CFR 123.33), to be attached to railcars from Canada which transited the U.S. will no longer be mandated. In this place, Customs will accept commercial shipper seals and certain other Customs approved seals. For conformity, all references to those seals in §§ 18.4 and 24.13(b) (19 CFR 18.4 and 19 CFR 24.13(b)) will be deleted from the regulations.

Regulatory Flexibility Act

Since no notice of proposed rulemaking is required for these amendments, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply.

Executive Order 12291

Because this document will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by the E.O. are not required.

Public Notice Requirement

Inasmuch as this action constitutes an amendment to the Customs Regulations so that they conform to currently existing operational procedures and are a reflection of internal operating procedures within the Customs Service, and, as such, neither imposes any additional burdens on, nor takes away any existing rights from, the public, pursuant to 5 U.S.C. 553(b)(A), notice and public procedure are unnecessary, and, for the same reasons, pursuant to 5 U.S.C. 553 (d)(2), a delayed effective date is not required.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 18

Customs duties and inspection, Common carriers, Freight forwarders, Railroads.

19 CFR Part 24

Customs duties and inspection.

19 CFR Part 123

Customs duties and inspection, Canada, Railroads, Freight, International boundaries.

Amendments to the Regulations

Parts 18, 24, and 123, Customs Regulations (19 CFR 18, 24, and 123) are amended as set forth below.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for Part 18 and the authority for § 18.4 continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1624.

Section 18.4 also issued under 19 U.S.C. 1322.

2. Section 18.4 is amended by revising the first sentence in paragraph (a)(1) to read as the following three sentences:

§ 18.4 Sealing conveyances and compartments; labeling packages; warning cards.

(a)(1) Conveyances or compartments in which carload lots of bonded merchandise are transported shall be sealed with commercial shipper seals, Customs red in-bond seals, or other accepted seals. High-security Customs

seals will be required on carload or containerized shipments where the Customs officer reviewing the in-bond entry determines it is required to adequately protect the revenue and prevent violations of Customs laws. The bonded carrier will provide Customs with the necessary seals. * * *

* * * * *

PART 24—CUSTOMS ACCOUNTING AND FINANCIAL PROCEDURE

1. The general authority citation for Part 24 continues to read as follows:

Authority: 19 U.S.C. 58a–c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701.

2. Section 24.13 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 24.13 Car, compartment, and package seals; kind, procurement.

* * * * *

(b) * * * Uncolored seals used to seal containers of commercial traveler's samples transiting the United States as provided by § 123.52 of this chapter shall be stamped "Canada-United States Customs."* * *

* * * * *

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for Part 123 and the specific authority continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

Sections 123.31–123.34, 123.42, 123.52, 123.64 also issued under 19 U.S.C. 1553.

§ 123.33 [Removed and Reserved]

2. Section 123.33 is removed and reserved.

William von Raab,

Commissioner of Customs.

Approved: March 17, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89–6856 Filed 3–22–89; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 67

[DoD Directive 1200.1]

Placement of Reserve Component Units in Local Communities

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document revises 32 CFR Part 67. It prescribes policies and procedures in the location of Reserve units in accordance with demographic supportability. This document also provides standard procedures for placement of Reserve Component (RC) units of the Military Departments in local communities.

EFFECTIVE DATE: July 14, 1988.

FOR FURTHER INFORMATION CONTACT: D. McQuilliams, Office of the Assistant Secretary of Defense (Reserve Affairs), Room 3E325, the Pentagon, Washington, DC 20301, telephone 202–695–7307.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 67

Armed forces reserves, Intergovernmental relations.

Accordingly, 32 CFR Part 67 is revised as follows:

PART 67—PLACEMENT OF RESERVE COMPONENT UNITS IN LOCAL COMMUNITIES

Sec.

Authority: 5 U.S.C. 301.

§ 67.1 Purpose.

This part provides standard procedures for placement of Reserve Component (RC) units of the Military Departments to local communities.

§ 67.2 Applicability and scope.

This part: (a) Applies to the Office of the Secretary of Defense (OSD); the Military Departments and their Reserve Components (RCs); the Organization of the Joint Chiefs of Staff (OJCS); the U.S. Coast Guard and its Reserve Component (RC), with the concurrence of the Department of Transportation (DoT); and the Defense Agencies.

(b) Does not apply to actions involving RC units of the same Military Service being relocated within a local area dependent on the same source of qualified manpower.

(c) Does not limit the rights of Governors of States to fix the location of units of the National Guard within their respective borders, as authorized by 32 U.S.C. 104(a), Chapter 1.

§ 67.3 Policy.

(a) RC units located or to be located in a local community shall not be larger than the number that reasonably can be expected to be maintained at authorized or required strength in accordance with 10 U.S.C. 2234(1).

(b) The manpower potential of the area will be reviewed to determine adequacy for meeting and maintaining authorized strengths. Considered in the review shall be the number of persons living in the area who are qualified for membership in those Reserve units in accordance with 10 U.S.C. 2234(1).

(c) The provisions of paragraphs (a) and (b) of this section, shall be met before making expenditures for construction of a RC facility in accordance with sections 2233 and 2234 of Title 10.

(d) Any plan for placement of RC units in a local community and the provision of a facility for RC use shall ensure the greatest practicable use of the facility jointly by units for two or more RCs in accordance with section 2234(2) of Title 10.

(e) When a Military Department formulates a plan for the allocation of a RC unit to a local community where a unit of that Military Department formerly did not exist, or considers increasing the structure or number of existing units, the Secretary of the Military Department concerned shall consider the factors in § 67.5(a) and shall coordinate such a tentative location with the Secretaries of the other Military Departments.

(f) The Military Department, through command channels, also may utilize the advice of all military and civilian Agencies concerned with RC facilities, including the Joint Service Reserve Component Facility Boards (DoD Instruction 1225.7).

§ 67.4 Responsibilities.

(a) The *Secretary of the Military Departments* shall:

(1) Coordinate with other Military Departments to ensure that placement of RC units adversely shall not affect the ability of other Military Department RC units to obtain or maintain the manpower necessary for them to achieve satisfactory personnel readiness levels and to ensure greatest practical use of any facility constructed or improved in accordance with 10 U.S.C. 2234.

(2) Ensure maximum use of existing facilities and coordination with other Military Services to determine availability and use of existing facilities and/or joint use of planned facilities.

(b) The *Assistant Secretary of Defense (Reserve Affairs)* ASD(RA) shall resolve cases when complete coordination may not be effected under §§ 67.3 and 67.5

§ 67.5 Procedures.

(a) When approval is sought for the placement of a new RC unit in a local community or the construction of a RC facility, the Military Service concerned shall review the RC manpower potential of the area to determine whether it is adequate to meet and maintain the authorized strengths (approved manning levels) of its RC units considering the factors outlined in paragraphs (a)(1) through (4) of this section. This review shall address, but not be limited to, the following:

(1) The manpower market potential of the area to include the following:

(i) Age, education, and/or skill distribution of the population.

(ii) Determine if a potential recruiting conflict will exist among Services in specialized skills of prior Service personnel. Requests for this information may be submitted to the following: Director, Defense Manpower Data Center, 1600 N. Wilson Boulevard, Suite 400, Arlington, VA 22209.

(iii) Industrial and professional community composition, as related to skill requirements of the units.

(iv) Any manpower factors that might affect RC participation in the area.

(2) The history of authorized and actual strengths of RC units in the area, the authorized strength of units allocated to the area but not yet activated of all RCs, and other items relating to the following:

(i) Community attitude toward RC units.

(ii) Projected growth and composition of the population.

(iii) Enlisted and reenlistment trends of other RC units in the geographic area.

(3) Environmental impact of unit location on the community.

(4) The geographical site selection of the unit must consider the proposed unit's relationship to other units and headquarters in its wartime commmand.

(b) If a determination is made to proceed with locating the unit in the local community following the procedures in § 67.4(a), the Military Service concerned shall coordinate with other Military Services having or desiring to establish RC units in the area. Based on this coordination, the following statement shall be included in project justification documents:

The Reserve manpower potential to meet and maintain authorized strengths of all Reserve units in the areas where units are to be located has been reviewed in accordance with the procedures described in DoD Directive 1200.1. It has been determined, in coordination with the other Military Departments having Reserve units in the area, that the number of Reserve components presently located in the area, and those units having been allocated to this area for future activation, is not and shall not be larger than the number that reasonably may be maintained at authorized strength. (32 CFR Part 67)

(1) The statement in § 67.5(b) shall be certified by the RC chief, or designee, and retained in the project file by the RC concerned.

(2) Individual manpower determination statements shall be consolidated by the RCs and included as a program statement when the military construction program is submitted to the Secretary of Defense for congressional review in accordance with DoD 7110.1–M.

(3) Resource decisions shall comply with DoD Instruction 7041.3.

(c) The procedure for establishing or expanding a unit a local communities first shall consider joint use of existing facilities by units of two or more RCs. Acquisition, by purchase, lease, transfer, construction expansion, rehabilitation, or conversion of facilities for the RCs shall be in accordance with 10 U.S.C. 133 and DoD Instruction 1225.7.

March 20, 1989.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–6931 Filed 3–22–89; 8:45 am]

BILLING CODE 3810–01–M

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32 CFR Part 242b

General Procedures and Delegations of the Board of Regents of the Uniformed Services University of the Health Sciences

ACTION: Final rule.

SUMMARY: The Board of Regents of the Uniformed Services University of the Health Sciences is amending its regulations to disestablish all subsidiary Board of Regents' committees except the Executive Committee and to alter the number and responsibilities of the officers reporting to the Dean of the University.

EFFECTIVE DATE: February 20, 1989.

FOR FURTHER INFORMATION CONTACT: Charles R. Mannix, General Counsel, Uniformed Services University of the Health Sciences. Phone Number: (202) 295–3028.

SUPPLEMENTARY INFORMATION: In FR Doc 77–36169 published in the **Federal Register** on December 20, 1977 (42 FR 63775) the Uniformed Services University of the Health Sciences published General Procedures and Delegations of the Board of Regents of the Uniformed Services University of the Health Sciences. This was amended (1) FR Doc 78–28367 published in the **Federal Register** on October 10, 1978 (43 FR 46531) to alter the number and responsibilities of officers reporting to the Dean of the University, (2) FR Doc 81–8774 published in the **Federal Register** on March 23, 1981 (46 FR 18024) to realign certain functions of officers reporting to the President, (3) FR Doc 82–15200 published in the **Federal Register** on June 4, 1982 (47 FR 24297) to add one officers reporting to the President, (4) FR Doc 83–15363 published in the **Federal Register** on June 8, 1983 (48 FR 26451) to change the structure of the Administrative Affairs and Educational Affairs Committees of the Board of Regents, (5) FR Doc 84–27853 published in the **Federal Register** on October 25, 1984 (49 FR 42927) to alter the responsibilities of the officers reporting to the President, and (6) FR Doc 85–10091 published in the **Federal Register** on April 25, 1985 (50 FR 16229) to add one officer reporting to the President, Uniformed Services University of the Health Services.

This rule relates solely to internal matters of University organization and procedure; as a consequence, notice of proposed rulemaking and public participation in the rulemaking are not required by section 553 of Title 5 of the United States Code.

List of Subjects in 32 CFR part 242b

Medical and dental schools, Uniformed services, Organization and functions (government agencies).

Accordingly, 32 CFR Part 242b is amended as follows:

PART 242b—GENERAL PROCEDURES AND DELEGATIONS OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

1. The authority citation continues as follows:

Authority: 10 U.S.C. 2112–2117.

2. Section 242b.6 is revised as follows:

§ 242b.6 Committees.

(a) The Executive Committee shall be the one regular standing committee of the Board.

(b) The Executive Committee will be composed of:

(1) The Chairperson of the Board;

(2) The Vice Chairperson of the Board;

(3) The Secretary of Defense or his designee;

(4) The Dean of the University (President); and

(5) A member of the Board appointed by the Chairperson. The Dean of the University will be a non-voting member

whose presence will not be counted for the purpose of determining a quorum at any Executive Committee meeting.

(c) The Executive Committee will possess all powers of the Board of Regents except the power:

(1) To change the General Procedures and Delegations;

(2) To appoint or remove the Dean of the University (President), Dean of the School of Medicine, Dean of the Military Medical Education Institute, Chairpersons of Departments and tenured faculty;

(3) To amend the tenure policy of the University;

(4) To establish post doctoral, post graduate and technological institutes;

(5) To establish programs in continuing medical education;

(6) To agree to utilize Federal medical resources on a reimbursable basis;

(7) To affiliate with other universities.

3. Section 242b.7 is revised as follows:

§ 242b.7 Officers of the University.

(a) *Dean of the University.* (1) The Regents will appoint a Dean of the University who will also be known as the President.

(2) The President will be appointed or removed only by an affirmative vote of a majority of the Regents.

(3) At meetings of the Board of Regents, the President will be counted for the purpose of determining the presence of a quorum but will not vote.

(4) The President will be responsible for the management of the University and all its departments.

(5) The President will report to the Board at each regular meeting on the progress of the University, and will make recommendations for action.

(6) To assist in the performance of his or her duties, the President with the approval of the Board, will appoint, to act under the President's authority and direction, officers as follows:

(i) Vice President of the University.

(ii) Vice President for Operations of the University.

(iii) Commandant of the University.

(iv) Dean of the School of Medicine.

(v) Associate Dean for Academic Affairs of the School of Medicine.

(vi) Associate Dean for Operations of the School of Medicine.

(vii) Associate Dean for Continuing Education of the School of Medicine.

(viii) Associate Dean for Clinical and Academic Affairs.

(ix) Dean of the Military Medical Education Institute.

(7) The President, with the approval of the Board, may appoint and prescribe the powers and duties of other officers, as he or she may deem proper.

(8) If there is no one holding the office of President, the Board of Regents may appoint an Acting President to perform the duties of the President for such period of time as the Board may determine. If the Acting President is also a Regent, he or she will retain the powers and duties of a Regent while so acting.

(b) *Duties of officers.*—(1) *Vice President of the University.* (i) The Vice President of the University will assist the President and will perform such duties as may be directed from time to time by the President.

(ii) In the absence of the President, the Vice President will act for the President.

(2) *Vice President for Operations of the University.* (i) The Vice President for Operations will be responsible for the support of the educational and research activities of the University to include but not limited to:

(A) Financial Management;

(B) Building Services and Materiel Acquisition;

(C) Military Personnel;

(D) Civilian Personnel;

(E) Computer Operations; and

(F) Contracting.

(ii) He or she will be responsible for the preparation of the University budget estimates and program submission presentations for the approval of the Board.

(iii) He or she will recommend to the President persons for appointment as the Assistant Vice President for Administration and such other administrative positions as he or she deems proper.

(iv) For reporting purposes, Financial Management and Computer Operations will report directly to the Vice President for Operations; the Civilian Personnel Office, Military Personnel Office, Building Services and Material Acquisition, and Contracting will report to the Assistant Vice President for Administration, who in turn shall report to the Vice President for Operations.

(v) Serves as Acting President in absence of President and Vice President.

(3) *Commandant of the University.* (i) The Commandant will assist the President of the University in planning, developing, and directing the military activities and functions of the University.

(ii) In the absence of the President; Vice President; Vice President for Operations; Dean, School of Medicine; and the Dean, MMEI, he or she will act for the President.

(4) *Dean of the School of Medicine.* (i) The Dean of the School of Medicine will be responsible for planning, directing, and managing the activities of the School of Medicine.

(ii) He or she will recommend to the President and to the Board, personnel for faculty appointments and will perform such duties as may be directed from time to time by the Board or the President.

(iii) He or she will recommend to the President persons for appointment as the Associate Dean for Operations, Associate Dean for Academic Affairs, Associate Dean for Continuing Education, Associate Deans for Clinical and Academic Affairs, and such other administrative positions as he or she deems proper.

(iv) For reporting purposes, the Associate Dean for Operations, Associate Dean for Academic Affairs, Associate Dean for Continuing Education, Associate Deans for Clinical and Academic Affairs, Assistant Dean for Clinical Sciences, Assistant Dean for Graduate Medical Education Liaison, and Assistant Dean for Student Affairs will report directly to the Dean, School of Medicine.

(5) *Associate Dean for Academic Affairs of the School of Medicine.* (i) The Associate Dean for Academic Affairs will be responsible for the overall management and supervision of the University's Basic Sciences Departments, Clinical Sciences Departments, and the Academic Sections. The Assistant Dean for Graduate Education will report to the Associate Dean for Academic Affairs.

(ii) In the absence of the Dean, he or she will act for the Dean.

(6) *Associate Dean for Operations of the School of Medicine.* (i) The Associate Dean for Operations will be responsible for the support of the education and research activities of the School of Medicine to include but not limited to:

(A) Grants Management;

(B) Teaching and Research Support;

(C) Learning Resource Center; and

(D) Laser Biophysics Center.

(ii) He or she will be responsible for the preparation of the School of Medicine budget estimates and program submission presentations for the approval of the Board.

(iii) In the absence of the Dean and Associate Dean for Academic Affairs, he or she will act for the Dean.

(7) *Associate Dean for Continuing Education of the School of Medicine.* (i) The Associate Dean for Continuing Education will be responsible for all continuing education at the University to include its accreditation.

(ii) The Associate Dean for Continuing Education will report to the Dean, School of Medicine, or to the individual acting on behalf of the Dean.

(8) *Associate Deans for Clinical and Academic Affairs.* (i) The military medical officer next in line to succeed to command in each of the major affiliated Military Medical Centers, i.e., Walter Reed Army Medical Center, National Naval Medical Center, and Malcolm Grow U.S. Air Force Medical Center, respectively, will be the ex-officio incumbent of the position: Associate Dean for Clinical and Academic Affairs.

(ii) The respective Associate Dean for Clinical and Academic Affairs for each designated Center will exercise the authority and responsibilities of that position subject to respective Command regulations and policies. The incumbents will serve in a co-equal administrative status to each other within the School of Medicine's scope of authority and responsibility. Military medical officers will be appointed ex-officio and will serve in additional duty status in the Associate Dean for Clinical and Academic Affairs position in addition to their regular assignment.

(iii) Each Associate Dean for Clinical and Academic Affairs will be responsible to the Dean, School of Medicine, for central coordination, supervision, and implementation of School of Medicine/Uniformed Services University of the Health Sciences academic and investigative/research activities performed within his/her respective Military Medical Center Command. Additionally, each Associate Dean for Clinical and Academic Affairs will represent the interests of his/her affiliated Medical Center Command within the School of Medicine and serve as principal advisor to the Dean, School of Medicine, for all professional and military matters within that command which are relevant to the School of Medicine or the Uniformed Services University of the Health Sciences.

(9) *Dean of the Military Medical Education Institute.* (i) The Dean of the Military Medical Education Institute will be responsible for planning, directing, and managing the activities of the Military Medical Education Institute.

(ii) He or she will recommend to the President and to the Board, personnel for faculty appointments and will perform such duties as may be directed from time to time by the Board or the President.

(iii) He or she will recommend to the President persons for appointment to such administrative positions as he or she deems proper.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 20, 1989.

[FR Doc. 89-6932 Filed 3-22-89; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9F3722/R1017; FRL 3543-3]

Poly-D-Glucosamine (Chitosan); Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the biochemical growth regulator poly-*D*-glucosamine (hereafter referred to as chitosan) when used as a seed treatment in or on soybeans. This exemption was requested by Natural Ag, Division of Bentech Laboratories, Inc.

EFFECTIVE DATE: March 16, 1989.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Lawrence J. Schnaubelt, Acting Product Manager (PM 23), Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 28, 1989 (54 FR 8393), which announced that Natural Ag, Division of Bentech Laboratories, Inc., 14424 SE, Industrial Way, Clackamas, OR, had submitted pesticide petition (PP) 9F3722 to EPA, proposing that an exemption from the requirement of a tolerance be established for residues of the biochemical plant growth regulator chitosan when used as a seed treatment in or on soybeans.

Chitosan is a naturally occurring substance produced from chitin extracts of crustacean shells (e.g., crab, shrimp, and lobster). The product is intended for use in treatment of seed prior to planting. This chemical has been registered for use on oats and barley to produce stronger stems and reduce lodging caused by foot rot and for use on peas and beans to encourage phytoalexin production to combat effects of Fusarium. In soybeans it accelerates emergence, enhances early root and foliar growth, and increases pod setting and yields.

The chemical is taken up by plant cells where it enters the nucleus and stimulates messenger RNA and enzyme production. In grains, such enzymes are thought to be responsible for stimulating the plant to produce more lignin in the stems, resulting in stronger stems and decreased lodging. In legumes, the plants are stimulated to produce substances which inhibit the growth of pathogenic fungi.

The Agency considered the following factors in support of this request for exemption from requirement of a tolerance: (1) Chitosan is not toxic, as demonstrated in acute toxicity studies in mice, rats, and rabbits; (2) chitosan is naturally occurring in the environment in large concentrations; (3) chitosan has been exempted from the requirement for a tolerance in or on barley, beans, oats, peas, and wheat (40 CFR 180.1072) when used as a seed treatment; and (4) chitosan has been approved by the State of Oregon for use in unrestricted amounts as a soil amendment (fertilizer), a use not regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act. Certain chitin-based products are permitted to be used in foods as hypocholesterolemic agents, as dietary fiber in low-calorie diets, and as agents to increase the specific loan volume of bread.

Acceptable daily intake and maximum permissible intake considerations are not relevant to this exemption request. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request.

Chitosan is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should

specify the provisions of the regulation deemed objectionable and the grounds for the objection. If a hearing is requested, the objections must state the issues for the hearing and the grounds for objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: March 16, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1072 is revised, to read as follows:

§ 180.1072 Poly-D-glucosamine (chitosan); exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biochemical plant growth regulator poly-*D*-glucosamine when used as a seed treatment in or on barley, beans, oats, peas, soybeans, and wheat.

[FR Doc. 6969 Filed 3–22–89; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 300

[FRL–3541–7]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of site from the National Priorities List.

SUMMARY: The Environmental Protection agency (EPA) announces the deletion of the Wade (ABM) Site from the National Priorities List (NPL). The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the Commonwealth of Pennsylvania have determined that no further fund-financed remedial action is appropriate at this site, and that actions taken to date are protective of public health, welfare, and the environment.

EFFECTIVE DATE: March 23, 1989.

FOR FURTHER INFORMATION CONTACT: Rich Watman, RPM, EPA, Region III, Pennsylvania Remedial Response Section (3HW21), Hazardous Waste Management Division 841 Chestnut Building, 6th Floor, Philadelphia, PA 19107, (215) 597–3155.

SUPPLEMENTARY INFORMATION: The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substances Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

The site EPA deletes from the NPL is:

1. Wade (ABM), Delaware County, PA

An explanation of the criteria for deleting this site from the NPL was presented in section II of the December 21, 1988 Notice of Intent to Delete (53 FR 48662). A description of the site and how it meets the criteria for deletion was presented in Section IV of that Notice.

The closing date for comments on the Notice of Intent to Delete was January 3, 1989. No comments were received. An additional notice was placed in a local newspaper announcing the Intent to Delete and extending the comment period to February 23, 1989. No comments were received.

List of Subjects in 40 CFR Part 300

Chemicals, Hazardous substances, Hazardous waste, Superfund.

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows.

Authority: Section 105, Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9605 and Sec. 311(c) (2), Pub. L. 92–500 as amended, 86 Stat. 865, 33 U.S.C. 1321 (c) (2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Appendix B—[Amended]

2. The NPL in 40 CFR Part 300: Appendix B is amended as follows:

In Group 6 remove the following entry and move up the other entries accordingly: Wade (ABM), Delaware Co., Pennsylvania. The NPL will reflect this deletion in the next final update.

Stephen R. Wassersug,

Acting Regional Administrator.

Date: March 15, 1989.

[FR Doc. 89–6868 Filed 3–22–89; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 72

National Flood Insurance Program Provisions

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule revises the National Flood Insurance Program (NFIP) regulations dealing with reimbursement procedures for the review of proposed projects to determine if they would qualify for NFIP map revisions upon their completion. The rule increases the rates for review services and changes the payee.

EFFECTIVE DATE: March 23, 1989.

FOR FURTHER INFORMATION CONTACT: Charles A. Lindsey, Chief, Technical Operations Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472; telephone (202) 646–2760.

SUPPLEMENTARY INFORMATION: On January 1, 1986, the Federal Insurance Administration implemented 44 CFR, Part 72—Procedures and Fees for Obtaining Conditional Approval of Map Changes. Its purpose was to provide cost recovery for engineering review and administrative processing associated with the issuance of conditional Letters of Map Amendment (LOMAs) and conditional Letters of Map

Revision (LOMRs) for proposed floodplain modification projects. The fee structure for the issuance of these conditional LOMAs and LOMRs was based upon the then prevailing private sector labor rate of $25.00 per hour.

Based on a cost analysis conducted during February of 1988, §§ 72.3 and 72.4 are revised to reflect the currently prevailing private sector labor rate of $30.00 per hour. An additional fee category, Structural measures on alluvial fans, has been added under § 72.3, along with a corresponding fee. Alluvial fans are defined as geomorphic features characterized by a cone or fanshaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and are subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration. The number of hours allotted for the review of proposed structures on alluvial fans is 40, and the corresponding fee, at $30.00 per hour, is $1,200.00. Section 72.4 is also revised to specify payment of both the initial fee and the final cost to the National Flood Insurance Program as opposed to the United States Treasury. This change is necessary because the source of funding utilized to provide these services has been changed by Congress from appropriations from General Revenues to transfers from the National Flood Insurance Fund.

On December 30, 1988, FEMA published a notice of proposed rulemaking designed to notify interested parties of FEMA's intent to implement these rule changes. The final rule published today is essentially the same as the proposed rule.

In the summary of the proposed rule, FEMA invited the public to submit comments during the 30-day comment period which closed on January 30, 1989. No comments were received during the 30-day comment period.

FEMA has determined, based upon an Environmental Assessment, that this rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472

This rule will not have a significant economic impact on a substantial number of small entities and, hence, has not undergone regulatory flexibility analysis.

This rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this rule does not contain a collection of information as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 72

Flood insurance, Flood plains.

Accordingly, 44 CFR Chapter I, Subchapter B, is amended as follows:

PART 72—PROCEDURE AND FEES FOR OBTAINING CONDITIONAL APPROVAL OF MAP CHANGES

The authority citation for Part 72 continues to read as follows:

Authority: 42 U.S.C. 4001, et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 72.3 [Amended]

1. Section 72.3 is amended by revising paragraphs (a) (1) and (2) as follows:

(a) * * *	$000
(1) Single-lot	$150
(2) Multi-lot/Subdivision	$210

* * * * *

2. Section 72.3 is amended by revising paragraphs (b) (1) through (4) and by adding paragraph (b)(5), as follows:

* * * * *

(b) * * *

(1) New bridge or culvert (no channelization)	$420
(2) Channel modifications only	$480
(3) Channel modification and new bridge or culvert	$630
(4) Levees, berms or other structural measures	$810
(5) Structural measures on alluvial fans	$1,200

* * * * *

(b) * * *

§ 72.4 [Amended]

1. Section 72.4(c) is amended by replacing "$25.00" with "$30.00".

2. Section 72.4(e) is amended by replacing "United States Treasury" with "National Flood Insurance Program".

Harold T. Duryee,

Federal Insurance Administrator.

Issued: March 17, 1989.

[FR Doc. 89-6858 Filed 3-22-89; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 221

Permanent Relocation Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This regulation establishes policy implementing FEMA's responsibility under Executive Order 12580 to provide permanent relocation assistance to residents, businesses, and community facilities as part of a hazardous materials response action taken under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.* This regulation will be used in conjunction with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, and its implementing regulations, 49 CFR Part 24 (Uniform Regulations). When used with the Uniform Regulations, this regulation will provide for consistent implementation of permanent relocation programs, whether they are administered by FEMA, by another Federal Agency, or by a non-Federal entity.

EFFECTIVE DATE: This rule is effective April 24, 1989.

FOR FURTHER INFORMATION CONTACT: Charles D. Robinson, Superfund and Relocation Assistance Branch, Federal Emergency Management Agency, Room 710, 500 "C" Street SW., Washington, DC 20472, (202) 646-3805.

SUPPLEMENTARY INFORMATION: On November 22, 1988, FEMA published a proposed rule relating to permanent relocation assistance at 53 FR 47232. No comments were received. The agency is therefore publishing the regulation as a final rule.

Environmental Considerations

FEMA has determined, based upon an Environmental Assessment, that this rule will not have a significant impact upon the quality of the human environment. The Environmental Assessment and a finding of no significant impact are included in the formal docket file and are available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 5400 C Street, SW., Washington, DC 20472.

Regulatory Flexibility Act

The Agency has determined that this rule is not a major rule under Executive Order 12291 and I certify that the rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Hence, no regulatory impact analysis has been prepared.

Information Collection Requirements

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 3067–0156.

Public reporting burden for the requirements is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection requirements. Send comments regarding this burden estimate or any aspect of the requirements, including suggestions for reducing the burden, to the Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW. Washington, DC 20472; and to the Office of Management and Budget, Paperwork Reduction Project (3067–0156), Washington, DC 20503.

Federalism Assessment

I certify that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612.

List of Subjects in 44 CFR Part 221

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

Chapter I, Subchapter D, Title 44 of the Code of Federal Regulations is amended by adding Part 221 to read as follows:

PART 221—PERMANENT RELOCATION ASSISTANCE

Subpart A—General

Sec.

Subpart B—Real and Personal Property Acquisition

Subpart C—Relocation Assistance

Subpart D—Payments for Moving and Related Expenses

Subpart E—Replacement Housing Payments

Subpart F—Mobile Homes

Authority: 42 U.S.C. 9601 et seq.; E.O. 12580, 3 CFR, 1987 Comp., p. 193; 49 CFR Part 24.

Subpart A—General

§ 221.1 Purpose.

This part prescribes the policies to be followed by the Federal Emergency Management Agency (FEMA), other Federal Agencies, any State, or other entity when providing permanent relocation assistance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9601 et seq. also known as Superfund. This regulation is to be used in concert with the regulations which implement the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended. Those Regulations are located at 49 CFR Part 24, (the Uniform Regulations).

§ 221.2 Definitions.

For the purpose of this part:

(a) CERCLA or Superfund is the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

(b) Cooperative Agreement is an agreement between FEMA and a State that outlines the roles and responsibilities of the parties in implementing a CERCLA permanent relocation project.

(c) Determination is the decision EPA makes that permanent relocation of residents, businesses, and community facilities is required under CERCLA.

(d) Disaster Assistance means assistance provided as a result of major disaster declaration or emergency declaration under the Disaster Relief Act of 1974, Pub. L. 93–288.

(e) Fair Market Value is the price which a property will bring in a competitive and open market, the buyer and seller each acting prudently and knowledgeably. In permanent relocation programs under CERCLA, the fair market value is the value a willing buyer would have paid and a willing seller would have sold a property for the absence of hazardous material contamination.

(f) Interagency Agreement is the agreement between the EPA and FEMA that identifies those property owners eligible for permanent relocation assistance, and provides funding to FEMA to cover the cost of the relocation.

(g) Lead Federal Agency is the Federal agency that has primary responsibility for coordinating a CERCLA response action.

(h) Memorandum of Understanding (MOU) is the FEMA/EPA document that outlines the Agencies' responsibilities in implementing permanent and temporary relocation assistance under CERCLA.

(i) On Scene Coordinator (OSC) is the Federal official predesignated by the Lead Federal Agency to coordinate and direct Federal response.

(j) Permanent Relocation Assistance is the acquisition of real and/or personal property and the provision of assistance to residents, businesses and community facilities in finding, acquiring and/or renting replacement housing under CERCLA.

(k) Temporary Relocation Assistance is that assistance provided under FEMA Temporary Relocation Assistance Regulations, 44 CFR Part 220, to those persons temporarily displaced as a result of CERCLA actions.

(l) Uniform Regulation means the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs Regulations, 49 CFR Part 24.

§ 221.3 Program intent.

The intent of the FEMA Permanent Relocation Assistance Program is to acquire real and personal property, at a fair and equitable price, and to provide relocation assistance to eligible residents, businesses, and community facilities which are displaced for public health and safety reasons in connection with a Superfund hazardous substance response action and/or to allow the EPA or its agents to conduct clean-up activities. The program is not necessarily intended to totally compensate affected parties for all expenses and losses associated with contamination of the site.

§ 221.4 Eligibility criteria.

Permanent Relocation Assistance is provided to those residents, businesses, and community facilities determined by EPA to need permanent relocation in connection with a CERCLA action.

§ 221.5 Duplication of benefits.

Otherwise eligible permanent relocation benefits shall not be provided to a relocatee if such benefits would duplicate assistance which has been or will be provided by any other governmental source. Duplication of benefits between permanent relocation and temporary relocation assistance under CERCLA, or between permanent relocation assistance and disaster

assistance provided by government or private sources, is also prohibited.

§ 221.6 FEMA administration.

(a) The Associate Director (AD) for State and Local Programs and Support (SLPS) is responsible for the permanent relocation assistance program. The AD executes Cooperative Agreements with States for implementation of the permanent relocation programs.

(b) The Assistant Associate Director (AAD) for Disaster Assistance Programs (DAP) is responsible for managing the permanent relocation assistance program and site-specific operations including:

(1) Participating with EPA in preliminary site-specific planning, review of relocation options, and in determining relocation cost projections;

(2) Negotiating interagency agreements with EPA which define the scope and funding level of permanent relocation projects;

(3) Negotiating cooperative agreement with States and other parties to a address the roles and responsibilities of FEMA and other parties involved in permanent relocation programs; and

(4) Providing permanent relocation assistance.

(c) FEMA Regional Directors are responsible for the following:

(1) Referring all inquiries concerning permanent relocation actions to the Assistant Associate Director, DAP, and

(2) Providing staff support to the Assistant Associate Director, DAP.

§ 221.7 State commitments.

Permanent relocation assistance can be implemented only after the State enters into a cooperative agreement with FEMA which documents its agreements to the following:

(a) To take title to all real property in accordance with section 104(j)(2) of CERCLA, as amended;

(b) To condemn property when necessary to obtain title, unless the State is able to demonstrate that State law does not authorize such condemnations;

(c) To pay the percentage of the cost of the permanent relocation program required by section 104(c)(3) of CERCLA, as amended;

(d) To restrict the use of purchased property to those purposes determined to be acceptable by State and federal health officials and to distribute proceeds of any subsequent sale on the same cost-share basis indicated in paragraph (c) of this section;

(e) To coordinate all permanent relocation activities with FEMA.

§ 221.8 State administration.

States may elect to administer permanent relocation activities in lieu of FEMA administration. When a State agrees to administer all or part of the relocation activity, the State must submit a permanent relocation plan to the Assistant Associate Director, Disaster Assistance Program, State and Local Programs and Support for FEMA approval and implement the plan in accordance with these regulations and the Uniform Regulations. The plan shall include the items listed below:

(a) Identification of the State and/or local agencies assigned relocation responsibilities;

(b) A narrative defining the scope of the relocation project to include an organization and staffing plan;

(c) Budget and estimated outlay schedule;

(d) Time frames within which tasks will be accomplished; and

(e) Procedures to be used in providing assistance.

(Approved by the Office of Management and Budget under control number 3067–0156)

Subpart B—Real and Personal Property Acquisition

§ 221.9 Real property acquisition.

(a) Real property will be acquired when EPA determines acquisition is necessary under CERCLA.

(b) Real property will be acquired pursuant to 49 CFR Part 24.

(c) Only real property specifically identified by EPA or the lead Federal agency by individual address or site boundaries will be acquired.

(d) The property owner must grant the government permission to conduct CERCLA related activities on his or her property before relocation assistance may be provided to the owner.

(e) Only real property located within the site boundary at the time of the formal announcement (as defined in 49 CFR Part 24, Subpart A, § 24.2(k)) by EPA of the need for a permanent relocation, and which remains within the site boundaries at the time of closing, will be acquired.

§ 221.10 Personal property acquisition.

Personal property acquisition will be accomplished as prescribed in 44 CFR Part 220.13.

Subpart C—Relocation Assistance

§ 221.11 Relocation assistance.

Relocation assistance will be provided to all displaced persons pursuant to 49 CFR Part 24, Subpart C. Additional requirements and considerations are:

(a) Those eligible for permanent relocation assistance may be required to vacate their property immediately to a temporary location because of the danger continued occupancy may pose to the health and safety of the occupants or the public.

(b) Pursuant to the requirements of Executive Order 11988 and 44 CFR Part 9, persons displaced by a CERCLA action will not be relocated to areas in a floodplain unless there are not practicable alternative housing sites.

(c) Persons displaced by a CERCLA action and who permanently relocate to an area of special hazard (as defined in the Flood Disaster Protection Act of 1973, Pub. L. 93–234) will not be eligible for federal financial assistance for acquisition or construction purposes (pursuant to section 102(a) of the Act) if they do not purchase flood insurance.

(d) Persons displaced are not eligible for assistance to relocate to special flood hazard areas of communities which do not participate in the Flood Insurance Program.

Subpart D—Payments for Moving and Related Expenses

§ 221.12 Moving and related expenses.

Payments for moving and related expenses will be provided as prescribed in 49 CFR Part 24, Subpart D.

Subpart E—Replacement Housing Payments

§ 221.13 Replacement housing payments.

Payments for replacement housing will be provided as prescribed in 49 CFR Part 24, Subpart E.

Subpart F—Mobile Homes

§ 221.14 Mobile homes.

Assistance for mobile home owners and occupants will be provided as prescribed in 49 CFR Part 24, Subpart F.

Date: March 17, 1989.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 89–6659 Filed 3–22–89; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[CC Docket No. 86–128; FCC 89–61]

Unexecuted Contingent Interests

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action eliminates § 21.38(b)(3) of the Commission's Rules, which requires Commission approval before the grant of any contingent interest (such as a lien, stock pledge, option or stock warrant) in a licensee that would, if executed, effect a transfer of control.

This action is taken by the Commission in its effort to reduce both the paperwork burden imposed on licensees and the processing burden imposed on the Commission's staff.

This action will reduce regulatory delays and encourage the introduction of new communications services such as multiple channel wireless cable service.

EFFECTIVE DATE: April 24, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Terrence E. Reideler, Domestic Radio Branch, Common Carrier Bureau, (202) 634–1773.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, CC Docket No. 86–128, adopted February 15, 1989 and released March 10, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of the decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Order on Reconsideration

On September 25, 1987, the Commission issued a Report and Order that comprehensively revised Part 21 of the Commission's Rules. Report and Order in CC Docket No. 86–128, 2 FCC Rcd 571 (1987), 52 FR 37775 (Oct. 9, 1987). Part 21 governs the construction, licensing and operation of common carrier domestic fixed radio facilities.

Two petitions for reconsideration of the Report and Order were received. The first petition was filed on behalf of Association for Higher Education of North Texas, Catholic Television Network, Illinois Institute of Technology, Indiana Higher Educational Service Center, Rutgers University, TransVideo Communications, Inc. and University of Texas Health Science Center (collectively "the Educators"). The second petition was filed on behalf of The Microband Companies Incorporated ("Microband").

The Educators, all of whom are licensees of Instructional Fixed Television Service ("ITFS") systems, requested that the Commission reconsider those portions of the Report and Order that amended the procedures for processing applications for minor amendments to Part 21 facilities, specifically, §§ 21.41, 21.42 and 21.902 of the Rules. The Educators contended that these rule sections do not afford ITFS licensees sufficient protection from electrical interference caused by the modification of Multichannel Multipoint Distribution Service ("MMDS") facilities.

Microband, a Part 21 licensee, requested that the Commission abolish the newly adopted § 21.38(b)(3), which requires prior Commission approval of any conveyance of a contingent interest in a Part 21 licensee, if the execution of the contingent interest would cause the transfer of control of the licensee to the grantee. This new rule, said Microband, would increase both the paperwork burden imposed on licensees and the processing burden imposed on the Commission's staff without any countervailing benefit to the public.

By this Order the FCC denied the Educators' petition. The FCC stated that the arguments presented by the Educators, who did not participate in the earlier stages of this proceeding, had already been presented by commenters and subsequently rejected. The FCC said that the Educators had submitted no new evidence that additional protection to ITFS licensees was warranted.

Microband's petition, however, was granted. The FCC stated that its underlying goal in adopting § 21.38(b)(3) was to prevent *de facto* transfers of control through the conveyance of unexecuted contingent ownership interests. Although § 21.38(b)(c) achieved its intended goal, it also had the unforeseen consequence of imparting burdensome regulatory delay. The FCC, therefore, concluded that the public interest benefits expected from § 21.38(b)(3) were outweighed by the burdens the rule had imposed on Part 21 licensees, the processing staff, the users of Part 21 facilities and the public.

Ordering Clauses

Accordingly, *it is ordered* That the Petition for Reconsideration filed by the Educators is denied.

It is further ordered That the Petition for Reconsideration filed by Microband is granted.

It is further ordered, Pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, 47 U.S.C. 154(i) and 303(r), that Part 21 of Chapter I, Title 47 of the Code of Federal Regulations is amended as shown at the end of this document.

List of Subjects 47 CFR Part 21

Communications common carriers, Point-to-multipoint microwave, Point-to-point microwave, Transmission.

Donna R. Searcy,

Secretary.

Part 21 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 21—[AMENDED]

1. The authority citation for Part 21 continues to read as follows:

Authority: Sections 21.1 to 21.910 issued under sections 4 and 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, unless otherwise noted.

§ 21.38 [Amended]

2. Section 21.38 is amended by removing paragraph (b)(3).

[FR Doc. 89–6603 Filed 3–22–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–118; FCC 89–14]

Radio Broadcasting Services; FM Table of Allotments; Revision

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises §§ 73.203 and 73.3573(a)(i) of the Commission's Rules to permit the downgrading of an FM allotment by application without the need to first file a petition for rule making to amend the Table of FM Allotments (§ 73.202(b) of the Commission's Rules). With this action, this proceeding is terminated.

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–118, adopted January 23, 1989, and released March 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service,

(202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 73.203 of the Commission's Rules is revised to read as follows:

§ 73.203 Availability of channels.

(a) Except as provided for in paragraph (b) of this section, applications may be filed to construct FM broadcast stations only at the communities and on the channels contained in the Table of Allotments (§ 73.202(b)). Applications that fail to comply with this requirements, whether or not accompanied by a petition to amend the Table, will not be accepted for tender.

(b) After the initial filing window closes for a vacant FM allotment, an applicant may propose a lower class channel. Applications for the modification of an existing FM broadcast station may propose a lower class of channel. In both cases, the applicant need not file a petition for rule making to amend the Table of Allotments (§ 73.202(b)) to specify the lower channel class.

3. Section 73.3573 paragraph (a)(1) of the Commission's Rules is revised to read as follows:

§ 73.3573 Processing of FM broadcast and FM translator station applications.

(a) * * *

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for FM station authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.202(b)). Other requests for change in frequency or community of license for FM stations must first be submitted in the form of a petition for rule making to amend the Table of Allotments. In the case of FM translator stations authorized under Part 74, it is any change in frequency (output channel), or authorized principal community or area. For noncommercial educational FM stations, a major change is any change in frequency or community of license or any change in power or antenna location or height above average terrain (or combination thereof) which would result in a change of 50% or more in the area within the station's predicted 1 mV/m field strength contour. (A change in area is defined as the sum of the area gained and the area lost as a percentage of the original area). However, the FCC may within 15 days after the acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3580 and 1.1111 pertaining to major changes. Proposal to upgrade the class of an FM broadcast station must first be submitted as petitions for rule making to amend the Table of Allotments. After the initial filing window closes for a vacant FM allotment, an applicant may propose a downgraded class in an application for a new FM broadcast station. A license or permittee may seek the downgrading in class of its existing FM broadcast station by filing a minor change application.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–6823 Filed 3–22–89; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 512, 542, 546 and 552

[APD 2800.12 CHGE 64]

Acquisition Regulation; Inspection of Supplies

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to revise section 512.104 to modify the prescription for use of the Availability for Inspection, Testing and Shipment/Delivery clause and to make minor editorial changes; amend section 542.1107 to delete paragraph (c); delete section 546.301; modify sections 546.302, 546.302–70 and 546.302–71 to revise the sections to prescribe the new Source Inspection by Quality Approved Manufacturer and the Source Inspection clauses; delete sections 546.302–72, 546.316 and 546.316–70; modify section 552.212–72 to combine the two Availability for Inspection, Testing and Shipment/Delivery clauses currently used into a single clause with an alternate; modify section 552.242–70 to revise the Status Report of Orders and Shipments clause to change the reporting frequency from twice a month to once a month; delete section 552.242–72; retitle section 552.246–70 and revise the section to provide the text of the new Source Inspection by Quality Approved Manufacturer clause; delete section 552.246–72; renumber section 552.246–73 as 552.246–72 and revise the text of the Source Inspection clause; and delete sections 552.246–74 and 552.246–77.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

A notice of proposed rulemaking was published in the **Federal Register** on November 23, 1988 (GSAR Notice 5–173, 53 FR 47551). No public comments were received. Comments from various GSA offices have been considered and where appropriate incorporated in this final rule.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. This exemption applies to this proposed rule.

C. Regulatory Flexibility Act

The GSA indicated in GSAR Notice 5–173 that this rule may have an economic effect on a substantial number of small entities and invited comments from the public. No comments were received on the impact of the proposed rule. The final regulatory flexibility analysis which is available from the office identified above indicates that the rule may affect small business firms awarded contracts by GSA that require source inspection. GSA awarded approximately 4,570 contracts that required source inspection during FY–87. Of this total, 2,630 were awarded to small business. The rule will have a beneficial impact in that it will reduce the intrusion by Government inspectors at the production point of supplies by permitting the contractor to certify that the supplies being shipped under the contract are in conformance with the contract requirements. The Government will inspect the contractors inspection system to ensure it meets Federal Standard 368 and may periodically inspect a sampling of supplies shipped under the contract. Normally, the contractor will inspect supplies for conformance and simply certify conformance to the Government on the

DD Form 250. Currently, contractors prepare the DD Form 250 for deliveries to military agencies or the GSA Form 308 for deliveries to civilian agencies, and give it to the Government inspector who inspects the items and signs the form which is then distributed by the contractor. Under the proposed rule, the contractor will prepare the forms as before. However, if the contract contains the clause at GSAR 552.246–70 Source Inspection by Quality Approved Manufacturer, the contractor will certify in block 16 of the DD Form 250 that the shipment of supplies shown on the form were inspected and found to comply with all requirements of the contract. If the contract contains the clause at GSAR 552.246–72 Source Inspection, the Government inspector will continue to inspect the supplies before shipment and sign the form.

A further beneficial aspect from the contractor's perspective is the revision to the GSAR clause at 552.212–72 Availability for Inspection, Testing and Shipment/Delivery. The clause and prescription for its use are revised to eliminate the requirement to notify the Government that supplies are ready for inspection when the contract provides for source inspection by a Quality Approved Manufacturer.

D. Paperwork Reduction Act

The Status Report of Orders and Shipments clause at GSAR 552.242–70, the Source Inspection by Quality Approved Manufacturer clause at GSAR 552.246–70, and the Source Inspection clause at GSAR 552.246–72 contain information collection requirements which have been approved by OMB under section 3504(h) of the Paperwork Reduction Act and assigned OMB Control No. 3090–0027. The title of the first collection in this rule is "Status Report of Orders and Shipments." The clause requires contractors to submit a monthly report showing the status of processing of orders received under the contract. The contracting officer responsible for administering the contract uses the information to ensure that orders are shipped in accordance with the delivery terms established in the contract and to initiate appropriate action when orders are delinquent. The respondents are contractors awarded indefinite delivery or requirements contracts for stock replenishment items by GSA. The estimated annual burden for this collection is 4,570 hours. This is based on an estimated average burden hour per response of .083, a proposed frequency of 12 responses per respondent, and an estimated number of likely respondents of 4,570.

The title of the second collection in this rule is "Material Inspection and Receiving Report (DD Form 250 and GSA Form 308)." The clause at GSAR 552.246–70, Source Inspection by Quality Approved Manufacturer, requires the contractor prepare, sign and distribute a DD Form 250 for each shipment under the contract. The clause at GSAR 552.246–72, Source Inspection, requires the contractor to prepare for signature by a Government inspector the DD Form 250 for deliveries to military agencies or the GSA Form 308 for deliveries to civilian agencies. The contractor distributes the forms after signature by the Government inspector.

The information contained on the DD Form 250 or GSA Form 308 is used by various contract administration and other support offices to document contract quality assurance, acceptance of supplies, shipments, and to support payments. The information is essential to effective contract administration. The respondents are contracts awarded supply contracts by GSA that provide for source inspection. The estimated total annual burden for this collection is 263,000 hours. This is based on an estimated average burden hour per response of .5, an average proposed frequency of 115 responses per respondent, and an estimated number of likely respondents of 4,572. Any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden may be directed to the Director, Office of GSA Acquisition Policy and Regulations (VP) 18th and F Street NW. Room 4026, Washington, DC 20405 and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503.

List of Subjects in 48 CFR Parts 512, 542, 546 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 512, 542, 546 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 512—CONTRACT DELIVERY OR PERFORMANCE

2. Section 512.104 is amended by revising paragraphs (d) and (e) to read as follows:

512.104 Contract clauses.

* * * * *

(d) The contracting officer shall insert the clause at 552.212–72, Availability for Inspection, Testing and Shipment/Delivery, in solicitations and contracts that provide for source inspection by Government personnel and that require lengthy testing for which timeframes cannot be determined in advance. If the contract is for stock items, the contracting officer shall use Alternate I.

(e) The contracting officer shall insert the clause at 552.212–73, Parts and Services, in solicitations and contracts whenever an AID requisition (P10/c, P10/t, PA/PR) specifies the need for assembling, servicing, and maintenance of equipment to be performed by the contractor.

PART 542—CONTRACT ADMINISTRATION

542.1107 [Amended]

3. Section 542.1107 is amended by deleting paragraph (c).

PART 546—QUALITY ASSURANCE

546.301 [Removed]

4. Section 546.301 is removed.

5. Sections 546.302, 546.302–70 and 546.302–71 are revised to read as follows:

546.302 Fixed-price supply contracts.

546.302–70 Source inspection by quality approved manufacturer.

Contracting officers in the Federal Supply Service shall insert the clause at 552.246–70, Source Inspection by Quality Approved Manufacturer, in solicitations and contracts that provide for source inspection, except multiple award schedule contracts, motor vehicle contracts, and contracts awarded by the Special Programs Division of the Office of Scientific Equipment Commodity Center, unless the contracting officer, in conjunction with the Central Office Quality Assurance Division (FQA), decides inspection by Government personnel is necessary. Contracting officers may authorize the use of manufacturing plants or other facilities located outside the United States (including Puerto Rico and the Virgin Islands) to perform inspection and testing under paragraph (a)(1) of the clause when (a) inspection services are available from another Federal agency on the basis of its primary inspection responsibility in a geographic area, (b) an inspection interchange agreement exists with another agency concerning inspection at a contractor's plant, (c) procurement is being made for AID and specifies the area of source, or (d) other considerations will ensure more economical and effective inspection consistent with the Government's interests. Such authorization must be coordinated with FQA and documented in the file.

546.302-71 Source inspection.

The contracting officer shall insert the clause at 552.246-72, Source Inspection, in solicitations and contracts when it is determined that inspection is to be performed at the source by Government personnel.

546.302-72, 546.316 and 546.316-70 [Removed]

6. Sections 546.302-72, 546.316 and 546.316-70 are removed.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 552.212-72 is revised to read as follows:

552.212-72 Availability for inspection, testing and shipment/delivery.

As prescribed in 512.104(d), insert the following clause:

Availability for Inspection, Testing and Shipment Delivery (Mar 1989)

(a) The Government requires that supplies be made available for inspection and testing within _____* calendar days after receipt of _____ [Insert "notice if award" or "order"] and be _____ [Insert "shipped" or "delivered"] within _____* calendar days after receipt of (1) notice of approval and release by the Government inspector or (2) authorization to ship without Government inspection.

(b) Failure to make supplies available for inspection and testing or to _____ [Insert "ship" or "deliver"] as required by this clause may result in termination of this contract for default.

(End of Clause)

Alternate I (Mar 1989)

If the contract is for stock items, the Contracting Officer shall insert "shipped" or "ship" in the basic clause, add the following paragraph (b) and redesignate paragraph (b) of the basic clause as paragraph (c).

(b) If notice of approval and release by the Government inspector or authorization to ship without Government inspection is received before _____* calendar days after receipt of the _____ [Insert "notice of award" or "order"], receipt of such notice shall be deemed to be received on the _____* calendar days after receipt of _____ [Insert "notice of award" or "order"]. Shipments shall not be made before the _____ calendar day after receipt of the _____ [Insert "notice of award" or "order"] unless authorized in writing by the Contracting Officer.

*Entries are normally the same number of days specified for availability.

8. Section 552.242-70 is revised to read as follows:

552.242-70 Status report of orders and shipments.

As prescribed in 542.1107(a), insert the following clause:

Status Report of Orders and Shipments (Mar 1989)

(a) The Contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calendar month of contract performance. The information required by the Government shall be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instructions on the form, or in an automated printout form as an attachment to the GSA 1678 when authorized by the ACO. Blocks 1 through 5 of the GSA Form 1678 shall be completed and attached as a cover page to the automated report. Reports shall be forwarded to the ACO not later than the seventh workday of the succeeding month.

(b) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO, or reproduced by the Contractor.

(End of Clause)

552.242-72 [Removed]

9. Section 552.242-72 is removed.

10. Section 552.246-70 is retitled and revised to read as follows:

552.246-70 Source inspection by quality approved manufacturer.

As prescribed in 546.302-70, insert the following clause:

Source Inspection by Quality Approved Manufacturer (Mar 1989)

(a) *Inspection system and inspection facilities.* (1) The inspection system maintained by the Contractor under the Inspection of Supplies—Fixed Price Clause (FAR 52.246-2) of this contract shall be maintained throughout the contract period and shall comply with all requirements of Federal Standard 368, edition in effect on the date of the solicitation. A written description of the inspection system shall be made available to the Government before contract award. The Contractor shall immediately notify the Contracting Officer and the designated GSA quality assurance office of any changes made in the inspection system during the contract period. As used herein, the term "inspection system" means the Contractor's own facility or any other facility acceptable to the Government that will be used to perform inspections or tests of materials and components before incorporation into end articles and for inspection of such end articles before shipment. When the manufacturing plant is located outside of the United States, the Contractor shall arrange delivery of the items from a plant or warehouse located in the United States (including Puerto Rico and the Virgin Islands) equipped to perform all inspections and tests required by the contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(2) In addition to the requirements in Federal Standard 368, records shall include the date inspection and testing were performed. All records shall be available for at least 12 months after contract performance is completed.

(3) Offerors are required to specify, in the space provided elsewhere in this solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(4) Within 10 calendar days after receipt of the written notice of award, the Contractor shall provide the Contracting Officer with the name of the individual and an alternate that will be responsible for inspecting each shipment under this contract.

(b) *Inspection and receiving reports.* (1) For each shipment, the Contractor shall prepare and distribute DD Form 250, Material Inspection and Receiving Report, not later than the close of business the workday following shipment. The Contractor will be provided a supply of the DD Form 250 with complete instructions for preparation and distribution. When shipments are released, one of the officials named by the Contractor under paragraph (a) (4) above, shall certify that the supplies have been inspected and found to be in conformity with contract requirements. The certification shall be placed in block 16 of the DD Form 250 and shall read as follows: I certify that the shipment of supplies shown on this form was inspected and found to comply with all requirements of the contract.

Signature of Certifying Official

(c) *Inspection by Government personnel.* (1) Although the Government will normally rely upon the Contractor's certification as to the quality of supplies shipped, it reserves the right under the Inspection of Supplies—Fixed Price clause to inspect and test all supplies called for by this contract, before acceptance, at all times and places, including the point of manufacture. When the Government notifies the Contractor of its intent to inspect supplies before shipment, the Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until inspection by the Government is completed and shipment is authorized by the Government.

(2) Government inspection responsibility will be assigned to the GSA quality assurance office which has jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for inspection is located.

(3) During the contract period, a Government representative may periodically select samples of supplies produced under this contract for Government verification inspection and testing. Samples sent to a Government testing facility will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner

agreeable to both the Contractor and the Government.

(d) *Quality deficiencies.* (1) Notwithstanding any other clause of this contract concerning the conclusiveness of acceptance by the Government, any supplies or production lots shipped under this contract found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this contract within a period of _____* months after acceptance shall, at the Government's option, be replaced, repaired or otherwise corrected by the Contractor at no cost to the Government within 30 calendar days (or such longer period as the Government may authorize in writing) after receipt of notice to replace or correct. When the nature of the defect affects an entire batch or lot of supplies, and the Contracting Officer determines that correction can best be accomplished by retaining the nonconformning supplies and reducing the contract price by an amount equitable under the circumstances, then the equitable price adjustment shall apply to the entire batch or lot of supplies from which the nonconforming item was taken.

(2) If supplies in process, shipped, or awaiting shipment to fill Government orders are found not to comply with contract requirements, or if deficiencies in either plant quality or process controls are found, the Contractor may be issued a Quality Deficiency Notice (QDN). Upon receipt of a QDN, the Contractor shall take immediate corrective action and shall suspend shipment of the supplies covered by the QDN until such time as corrective action has been completed. The Contractor shall notify the GSA quality assurance office, within 5 workdays, of corrective action taken or to be taken to permit onsite verification by a Government representative. Shipments of nonconforming supplies will be returned at the Contractor's expense. Repeated shipments of nonconforming supplies or failure to complete corrective action in a timely manner may result in termination of this contract. Delays due to the issuance of a QDN do not constitute excusable delay under the Default clause.

(3) This contract may be terminated for default if subsequent Government inspection discloses that plant quality or process controls are not being maintained, subspecification supplies are being shipped, or there is failure to comply with any other requirement of this clause.

(e) *Additional cost for inspection and testing.* The Contractor will be charged for any additional cost of inspection/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246–2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $_____** per man-hour or fraction thereof if the inspection is at a GSA distribution center; $_____** per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $_____** per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under FAR 52.246–2(h) pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to save unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246–2(1), supplies may be stored for the Contractor's account or sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale.

(g) *Subcontracting requirements.* The Contractor shall insert in any subcontracts the inspection or testing provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause of this contract. The Contractor shall be responsible for compliance by any subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause.

(End of Clause)

* The Contracting Officer shall normally insert 12 months as the period during which defective or otherwise nonconforming supplies must be replaced. However, when the supplies being bought have a shelf life of less than 1 year, the shelf-life period should be used, or in the instance where a longer period may reasonably be expected to be available, the longer period should be used.

** The rates to be inserted are established by the Commissioner of the Federal Supply Service or a designee.

552.246–72 [Removed]

11. Section 552.246–72 is removed.

12. Section 552.246–73 is redesignated as 552.246–72 and revised to read as follows:

552.246.72 Source inspection.

As prescribed in 546.302–71, insert the following clause:

Source Inspection (MAR 1989)

(a) *Inspection by Government personnel.* (1) Supplies to be furnished under this contract will be inspected at source by the Government before shipment from the manufacturing plant or other facility designated by the Contractor, unless the Contractor is otherwise notified in writing by the Contracting Officer or a designated representative. Notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment. Samples sent to a Government testing facility will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(2) Government inspection responsibility will be assigned to the GSA quality assurance office which has jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for inspection is located. The Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until after inspection by the Government is completed and shipment is authorized by the Government.

(b) *Inspection and receiving reports.* For each shipment, the Contractor shall be responsible for preparation and distribution of inspection documents as follows: (1) DD Form 250, Material Inspection and Receiving Report, for deliveries to military agencies; or (2) GSA Form 308, Notice of Inspection for deliveries to GSA or other civilian agencies. When required, the Contractor will be furnished a supply of GSA Form 308 and/or DD Form 250, and complete instructions for their preparation and distribution.

(c) *Inspection facilities.* (1) The inspection system required to be maintained by the Contractor in accordance with FAR 52.246–2, Inspection—Fixed Price, may be the Contractor's own facilities or any other facilities acceptable to the Government. These facilities shall be utilized to perform all inspections and tests of materials and components before incorporation into end articles, and for the inspection of such end articles before shipment. The Government reserves the right to evaluate the acceptability and effectiveness of the Contractor's inspection system before award and periodically during the contract period.

(2) Offerors are required to specify, in the spaces provided elsewhere in the solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(3) The Contractor shall deliver the items specified in this contract from a plant or warehouse located within the United States (including Puerto Rico and the Virgin Islands) that is equipped to perform all inspections and tests required by this contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(d) *Availability of records.* In addition to any other requirements of this contract, the Contractor shall maintain records showing the following information for each order received under the contract: (1) Order number; (2) date order received by the Contractor; (3) quantity ordered; (4) date

scheduled into production; (5) batch or lot number, if applicable ; (6) date inspected and/or tested; (7) date available for shipment; (8) date shipped or date service completed; and (9) National Stock Number (NSN), or if none is provided in the contract, the applicable item number of other contractual identification. These records should be maintained at the point of source inspection, and available to the Contracting Officer, or an authorized representative, for at least 12 months after contract performance is completed.

(e) *Additional cost for inspection and testing.* The Contractor will be charged for any additional cost for inspecting/testing or reinspection/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246–2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $_____* per man-hour or fraction thereof if the inspection is at a GSA distribution center; $_____* per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $_____* per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under FAR 52–246–2(h) pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to save unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52–246–2(1), supplies may be stored for the Contractor's account or sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of sale.

(End of Clause)

*The rates to be inserted are established by the Commissioner of the Federal Supply Service or a designee.

552.246–74 [Removed]

13. Section 552.246–74 is removed.

552.246–77 [Removed]

14. Section 552.246–77 is removed.

Dated: March 14, 1989.

Richard H. Hopf,

Associate Administrator for Acquisition Policy.

FR Doc. 89–6849 Filed 3–22–89; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 54, No. 55
Thursday, March 23, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-125-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to McDonnell Douglas DC-10-10, 10F, -15, -30, -30F, -40, and KC-10A (Military) serice airplanes, which would require inspections of the outboard flap vanes for delamination of the skin from the core of the vanes and, if necessary, repair or replacement of the vanes. This proposal is prompted by reports of inflight incidents where pieces of the outboard flap vane departed the airplane. This condition, if not corrected, could lead to the separation of portions of the outboard flap vane from the wing of the airplane.

DATE: Comments must be received no later than May 18, 1989.

ADDRESS: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attnetion: Airworthiness Rules Docket No. 88-NM-125-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Maurice P. Cook, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425, telephone (213) 988-5226.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-125-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The McDonnell Douglas Model DC-10 series airplanes outboard flap vane is a bonded assembly made from aluminum honey comb core with a one piece aluminum skin formed-over and bonded to the core. There is a production splice joint at mid-span. There have been several cases of delamination of the aluminum skin from the core at the mid-span splice joint of the outboard flap vane, which led to the failure of the flap vane with portions of the flap vane departing the airplane. Most of the failures occurred at the splice joint where repairs had been made for previous delaminations. This condition, if not corrected, could lead to the loss of portions of the flap vane in flight.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin No. A57-110, dated September 4, 1987, Revision 1, dated August 10, 1988, and Revision 2, dated December 20, 1988, which describes procedures for inspection and repair or replacement of the outboard flap vane assemblies.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspections of the outboard flap vane splice joint within the next 90 days and would require inspections of the entire outboard flap vanes within 18 months with repetitive inspections of the entire outboard flap vane at intervals of 18 months, in accordance with the service bulletin previously described. The proposed AD would also provide instructions for temporary repairs of the delaminated flap vanes, and would provide terminating action by installing new flap vanes or vanes with permanent repairs.

It is estimated that there are 427 airplanes in the worldwide fleet. It is estimated that 213 of these airplanes are of U.S. registry and would be affected by this AD. It would take approximately 20 manhours per airplane to accomplish the required inspections, with an average labor cost of $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $170,400.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not

have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model DC-10 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) series airplanes, with outboard flap vane part numbers ARC 1455 or 1457-1, -2, -501, -502, -503, -504, -505, or -506, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the outboard flap vane, accomplish the following:

A. Within 90 days after the effective date of this AD or within five calendar years after the installation of the outboard flap vanes, whichever occurs later, inspect the splice joint of the outboard flap vane for skin delamination, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin A57-110, Revision 1, dated August 10, 1988, or Revision 2, dated December 20, 1988.

B. Within 18 months after the effective date of this AD, or within five calendar years after the installation of the outboard flap vane, whichever occurs later, and thereafter at intervals not to exceed 18 months, inspect the entire outboard flap vane for skin delamination, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin A57-110, Revision 1, dated August 10, 1988, or Revision 2, dated December 20, 1988.

C. If the outboard flap vane skin delamination and the delamination at the spice joint are within the repairable limits specified in Figure 1, sheet 5 of 5, of McDonnell Douglas Service Bulletin A57-110, Revision 1, dated August 10, 1988, or Revision 2, dated December 20, 1988, accomplish the following:

1. Prior to further flight, make temporary repairs to the outboard flap vane in accordance with McDonnell Douglas Service Bulletin A57-110, Revision 1, dated August 10, 1988, or Revision 2, dated December 20, 1988; and

2. Within six months after accomplishing the temporary repairs and thereafter at intervals not to exceed two months, inspect the repairs in accordance with McDonnell Douglas Service Bulletin A57-110, Revision 1, dated August 10, 1988, or Revision 2, dated December 20, 1988; and

3. Within 24 months after accomplishing the temporary repairs:

a. Replace the outboard flap vane in accordance with McDonnell Douglas Service Bulletin A57-110, Revision 1, dated August 10, 1988, or Revision 2 dated December 20, 1988; or

b. Accomplish a permanent repair in accordance with McDonnell Douglas Service Bulletin A57-110, Revision 2, dated December 20, 1988; or

c. Accomplish a permanent repair using a repair method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. If the outboard flap vane skin delamination is greater than the limits for temporary repairs specified in Figure 1, sheet 5 of 5, of McDonnell Douglas Service Bulletin A57-110, Revision 1, dated August 10, 1988, or Revision 2, dated December 20, 1988, replace the outboard flap vane before further flight, or accomplish a permanent repair in accordance with McDonnell Douglas Service Bulletin A57-110, Revision 2, dated December 20, 1988.

E. If the outboard flap vane skin delamination is within the unrepaired flyable limits specified in Figure 1, sheet 3 and 4 of 5, of McDonnell Douglas Service Bulletin A57-110, Revision 1, dated August 10, 1988, or Revision 2, dated December 20, 1988, continue the inspections required by paragraph B above.

F. Installation of outboard vane assemblies ARC 1455-507, ARC 1455-508, ARC 1455-509, ARC 1455-510, ARC 1457-507, and/or ARC 1457-508 (as applicable), or the accomplishment of permanent repairs in accordance with McDonnell Douglas Service Bulletin A57-110, Revision 2, dated December 20, 1988, constitutes terminating action for the repetitive inspections required by this AD.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60).

These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on March 15, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-6810, Filed 3-22-89; 8:45 am]

BILLING CODE: 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AWP-21]

Proposed Alteration of VOR Federal Airway; Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-235 by extending the airway from Mormon Mesa, NV, to Peach Springs, AZ. A special flight rules area has been established around the Grand Canyon, CO, area. The flight-free zone restricts aircraft in the Grand Canyon area from operating below 14,500 feet mean sea level (MSL). This action would provide an airway, outside of the zone, with a lower minimum en route altitude (MEA), thereby aiding pilots unable to operate at higher altitudes.

DATE: Comments must be received on or before May 8, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 88-AWP-21, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–AWP–21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V–235 by extending the airway from Mormon Mesa, NV, to Peach Springs, AZ. Special flight rules have been established for the Grand Canyon area. This flight-free zone restricts aircraft proceeding northbound from the Grand Canyon from operating below 14,500 feet MSL. This action would also provide a lower MEA between Mormon Mesa and Peach Springs. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a signficant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administation proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The auhority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–235 [Amended]

By removing the words "From Morman Mesa, NV, via INT Morman Mesa," and substituting the words "From Peach Springs, AZ, Mormon Mesa, NV, via INT Mormon Mesa"

Issued in Washington, DC, on March 13, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–6811 Filed 3–22–89; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 201

[Release Nos. 33–6827; 34–26632; 35–24839; 39–2210; IC–16867; IA–1159; File No. S7–12–89]

Equal Access to Justice Act Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is proposing revised procedural rules implementing the Equal Access to Justice Act ("EAJA"), 5 U.S.C. 504, as amended by Pub. L. No. 99–80. The Act, in relevant part, provides for the award of attorney fees and other expenses to certain parties who prevail against the federal government in adversary adjudications before agencies. In connection with its implementation of the EAJA, the Commission is also proposing to amend its delegation of authority to its Chief Administrative Law Judge.

DATE: Comments on the proposed rule revisions must be received on or before April 24, 1989.[1]

ADDRESS: Comments must be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–12–89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David C. Mahaffey, Assistant General Counsel, or Kerry Hemond, Attorney, Office of the General Counsel, Securities and Exchange Commission, 450 Fifth

[1] Although the Commission is providing a notice of proposed rulemaking and seeking public comment on the proposed rule revisions, it regards the proposed revisions as affecting rules of agency practice and so not required by 5 U.S.C. 553 to be proposed for public comment. For the same reason it does not regard these proposals as subject to the Regulatory Flexibility Act, 5 U.S.C. 603, 604, although the Chairman of the Commission has executed a certification conforming to that Act.

Street, NW., Washington, DC 20549; (202) 272-2428.

SUPPLEMENTARY INFORMATION: On May 6, 1986, the Administrative Conference of the United States ("ACUS") issued model regulations for federal agency implementation of the EAJA, as amended in 1985 by Pub. L. No. 99-80. 51 FR 16659 (May 6, 1986). The EAJA allows financially eligible litigants who prevail against the federal government in civil actions and administrative proceedings to recover attorney fees and other expenses, unless the government can show that its position was substantially justified or that special circumstances exist that would make an award unjust. Among other things, the 1985 amendments removed "sunset" provisions from the EAJA as originally enacted in 1980, broadened the class of litigants financially eligible to seek EAJA awards, and clarified several interpretive points. Financial eligibility formerly was limited to individuals with a net worth of $1 million or less and to certain organizations with a net worth of $5 million or less. The figures are now $2 million and $7 million respectively.

The Commission is proposing to revise its rules implementing the EAJA, 17 CFR 201.31 *et seq.*, to implement the 1985 statute. The Commission's staff has studied the revised Model Rules adopted by ACUS and has consulted with ACUS concerning possible amendments to the Commission's EAJA rules.

For the most part, the Commission is proposing to depart from the 1986 Model Rules only where the Commission's existing EAJA rules already differed from the 1981 Model Rules or where the 1986 Model Rule revisions are inapplicable to Commission proceedings or otherwise unnecessary. For example, the proposed Commission rules omit references to contract appeal proceedings, since the Commission does not adjudicate these kinds of proceedings. The principal differences between the 1986 Model Rules and the Commission's EAJA rules, as well as several other matters, are treated individually in the section-by-section analysis below. The analysis does not address departures from the Model Rules decided upon when the Commission initially adopted its EAJA rules in 1981,[2] unless modifications in the differences are proposed. Two new provisions not in the Model Rules also are being proposed. The first would delegate authority to the Chief Administrative Law Judge to assign EAJA applications to particular administrative law judges. The second would add a sentence to the EAJA rule on settlements to make it explicit that settlements may include a waiver of all EAJA fees.

Section-By-Section Analysis

Section 201.31, Purpose of these rules [3]

The present § 201.31, unlike the Model Rules, includes a finding that the EAJA rules do not impose a burden on competition. This finding was correct and remains so, but it need not appear in the rules and should be deleted.

Section 201.32, When the Act applies

Certain of the applicability provisions of the New Model Rule pertain only to Board of Contract Appeal cases. Since the Commission does not hear such cases, this section does not include such provisions.

Section 201.33, Proceedings covered [4]

Both the original and revised Model Rules state that the agency's list of its adversary adjudications (Appendix at 17 CFR 201.60 in the Commission's rules) is not necessarily exhaustive and that an applicant may seek an award for other proceedings it believes the EAJA covers, with the issue of coverage to be decided at the time of the application. The Commission proposes revising its rule to include this statement so as to preserve the possibility of considering an application of the EAJA to proceedings not listed in the Appendix, if justified in the particular circumstances. A Commission investigation, however, is not an adversary adjudication covered by the EAJA.[5]

Section 201.34, Eligibility of applicants [6]

Besides raising financial eligibility ceilings, the 1986 Model Rules and the 1985 EAJA also add a reference to "unit of local government" in describing types of eligible organizations. The Commission's current EAJA rules do not refer specifically to units of local governments but do mention "[a]ny other * * * public or private organization with a net worth of" the statutory amount. The Commission proposes to follow the new Model Rules for the sake of uniformity and conformity with the wording of the statute.

Section 201.35, Standards for awads [7]

The Model Rule corresponding to this section of the Commission rules has a new sentence describing the "agency position" that must be "substantially justified" to avoid an EAJA award: "The position of the agency includes, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based." This sentence reflects a change in the statute, but it is primarily relevant to agencies in which, for example, officers grant or deny applications for benefits subject to appeal to the agency head in an adversary adjudication. The "position of the agency" will now include the lower officer's initial decision, regardless of the position taken in the subsequent adversarial phase.

However, EAJA claims before the Commission generally arise in administrative proceedings where there is no relevant initial position different from the agency's position in the adversary adjudication. Challenges to other Commission actions, such as rulemaking, do not come before the Commission in adversary adjudications but are filed directly in a federal district or appellate court. Nevertheless, the Commission proposes to include the new sentence for the sake of conformity with the language of the statute.

Section 315.105 of the Model Rules also drops the reference to a substantially justified position as one "reasonable in law and fact." The Commission proposes to retain this phrase. The case law and the legislative history indicate that the test is inevitably one of reasonableness, the only question being one of degree. To abandon the formulation "reasonable in law and fact' would suggest imposing a heavier burden on the staff than the legislative history and case law justify.[8]

Section 201.36, Allowable fees and expenses [9]

The Commission's current rule disallows any award for expenses incurred in making the EAJA application itself. This provision is in neither the old nor the new Model Rules and should be dropped.

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[2] *See* Securities Act Release No. 6368 (Dec. 18, 1981), 47 FR 609 (1982).

[3] The section numbers appearing in the text are from the Commission's regulations in Title 17 of the Code of Federal Regulations. Corresponding Model Rule numbers are noted. 17 CFR 201.31 corresponds to Model Rule 315.101 (1 CFR 315.101).

[4] Model Rule 315.103.

[5] *See Family Television Inc. v. SEC*, 608 F. Supp. 882 (D.D.C. 1985).

[6] Model Rule 315.104.

[7] Model Rule 315.105.

[8] *See, e.g., Haitian Refugee Ctr. v. Meese*, 791 F.2d 1489, 1497 (11th Cir. 1986); *Gavette v. Office of Personnel Management*, 785 F.2d 1568, 1578-79 (Fed. Cir. 1986); *Russell v. National Mediation Bd.* 775 F.2d 1284 (5th Cir. 1985); 131 Cong. Rec. (June 24, 1985) H4763, (statements of Reps. Kindness, Moorhead and Kastenmeier); *see also* S. Rep. No. 253, 96th Cong., 1st Sess. 7 (1979).

[9] Model Rule 315.106.

Section 201.37, Delegations of authority [10]

This section is unchanged in the Model Rules, but past experience within the Commission suggests that it would be desirable expressly to delegate responsibility for the initial assignment of EAJA applications. Therefore, the Commission proposes to amend § 201.37 to delegate assignment responsibility to the Chief Administrative Law Judge. A corresponding amendment to 17 CFR 200.30–10, the section containing general delegations to the Chief Administrative Law Judge, also is being proposed.

Section 201.44, When an application may be filed [11]

The Commission is not proposing to follow changes in this section of the Model Rules that deal with appeals by the United States to a court, since the United States does not appear in Commission adjudications. The Commission staff might be regarded as the "United States" for purposes of the rule, but the staff cannot appeal from an adverse Commission adjudication.

Section 201.54, Settlement [12]

The Model Rules have not been revised here, but the Commission proposes to add a sentence to its rule to make clear that settlements may include terms effecting a waiver of EAJA claims. [13]

Section 201.55, Further proceedings [14]

The 1986 Model Rules revise this section to provide that the issue of substantial justification is ordinarily to be determined from the administrative record. However, on request of either the applicant or agency counsel, the adjudicating officer may order further proceedings. The Commission proposes to follow this revision. However, the new Model Rule refers to "discovery," as well as further evidentiary hearings, on other EAJA issues such as eligibility and substantiation of expenses. While the Commission's current rule, like the Model Rule, provides for further evidentiary hearings in appropriate cases, it does not mention "discovery." Rule 8(d) of the Commission's Rules of Practice provides for procedures to be used in the schedule of conferences and exchange of memoranda in connection with hearings to which the Commission is a party. The Commission's procedural rules do not, however, provide for a system of prehearing discovery, on EAJA or any other issues, at least not of the type ordinarily implied by the term "discovery." Therefore, the Commission proposes not to employ the term "discovery" in its revised EAJA rules. The Commission proposes to revise this section to make clear that a judge in an EAJA hearing may require the same procedures as are set forth in Rule 8(d) of the Commission's Rules of Practice.

Section 201.59, Payment of award [15]

The Commission's present rule and the 1981 Model Rules expressly provide for suspension of payment if a party has sought judicial review of the EAJA award or of the underlying case. The 1986 Model Rules delete this provision without explanation.[16] Under the new Model Rules, to obtain payment the successful EAJA applicant must certify that he will not appeal the award he has received. The Model Rule, however, does not address situations where (1) an appeal of the award is nonetheless made, or (2) the underlying case is appealed. In the first situation, no award should be paid, as is clear from the Commission's present rule. No change is needed here. However, in the second situation, an appeal should only concern issues different from those as to which an EAJA award has been made, because the EAJA applicant prevailed on those issues. There is no reason to delay payment on the EAJA award pending an appeal over different issues, and the Commission proposes to modify its rule accordingly.

Regulatory Flexibility Act Certification

The Chairman of the Commission has certified that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The certification is attached to this release.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

17 CFR Part 201

Administrative practice and procedure, Investigations, Securities.

Text of Proposed Amendments

It is proposed to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 200—[AMENDED]

1. The authority citation for Part 200, Subpart A, continues to read in part as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted.

2. By amending § 200.30–10 by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) as follows:

§ 200.30–10 Delegation of authority to Chief Administrative Law Judge.

* * * * *

(b) With respect to proceedings under the Equal Access to Justice Act, 5 U.S.C. 504, to make assignments as provided in § 201.37(b) of this chapter, respecting applications made pursuant to that Act.

* * * * *

PART 201—[AMENDED]

3. The authority citation for Part 201, Subpart B, continues to read as follows:

Authority: Sec. 19, Securities Act of 1933, 15 U.S.C. 77r; secs. 23 and 24, Securities Exchange Act of 1934, 15 U.S.C. 78w and 78x; sec. 20, Public Utility Holding Company Act of 1935, 15 U.S.C. 79t; sec. 319, Trust Indenture Act of 1939, 15 U.S.C. 77sss; sec. 38, Investment Company Act of 1940, 15 U.S.C. 80a–37; sec. 211, Investment Advisers Act of 1940, 15 U.S.C. 80b–11; and sec. 203(a)(1), Equal Access to Justice Act, 5 U.S.C. 504(c)(1).

4. By revising § 201.31 to read as follows:

§ 201.31 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use in ruling on those applications.

5. By revising § 201.32 to read as follows:

[10] Model Rule 315.109.

[11] Model Rule 315.204.

[12] Model Rule 315.305.

[13] *See Evans v. Jeff D.*, 475 S. Ct. 717 (1986), a civil rights class action where the Supreme Court approved inclusion of a fee waiver in the settlement of litigation that was subject to a fee-shifting statute.

[14] Model Rule 315.306.

[15] Model Rule 315.310.

[16] *Compare* 51 FR 16665, 16669 *with* 50 FR at 46256.

§ 201.32 When the Act applies.

The act applies to adversary adjudications described in § 201.33 pending or commenced before the Commission on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in these rules, has been filed with the Commission within 30 days after August 5, 1985. Proceedings which have been substantially concluded are not deemed pending under these rules although officially pending for purposes such as concluding remedial actions found in Commission orders or private undertakings.

6. By amending § 201.33 to redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) as follows:

§ 201.33 Proceedings covered.

* * * * *

(b) The fact that the Commission has not identified a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

* * * * *

7. By amending § 201.34 by revising paragraph (b) to read as follows:

§ 201.34 Eligibility of applicants.

* * * * *

(b) The types of eligible applicants are as follows:

(1) An individual with a new worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

* * * * *

8. By amending § 201.35 by revising paragraph (a) to read as follows:

§ 201.35 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the Office or Division over which the applicant has prevailed was substantially justified. The position of the Office or Division includes, in addition to the position taken by the Office or Division in the adversary adjudication, the action or failure to act by the Office or Division upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on counsel for an Office or Division of the Commission, which must show that its position was reasonable in law and fact.

* * * * *

9. By amending § 201.36 by revising paragraph (b) to read as follows:

§ 201.36 Allowable fees and expenses.

* * * * *

(b) No award of the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the reasonable rate at which the Commission pays witnesses with similar expertise. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

* * * * *

10. By revising § 201.37 to read as follows:

§ 201.37 Delegations of authority.

(a) The Commission may by order delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases.

(b) Unless the Commission shall order otherwise, applications for awards of fees and expenses made pursuant to this subpart shall be assigned by the Chief Administrative Law Judge to an administrative law judge for determination.

11. By amending § 201.41 by revising paragraph (b) to read as follows:

§ 201.41 Contents of application.

* * * * *

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

* * * * *

12. By amending § 201.44 by removing paragraph (c), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 201.44 When an application may be filed.

* * * * *

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the Commission and to the courts.

* * * * *

13. By revising § 201.54 to read as follows:

§ 201.54 Settlement.

The applicant and counsel for the Office or Division of the Commission may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded, in accordance with the Commission's standard settlement procedure. *See* 17 CFR 201.8. If a prevailing party and counsel for the Office or Division of the Commission agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. If a proposed settlement provides that each side shall bear its own expenses, and the settlement is accepted, no application may be filed.

14. By amending § 201.55 by revising paragraph (a) to read as follows:

§ 201.55 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for the Office or Division of the Commission, or on his or her own initiative, the administrative law judge may order further proceedings, such as an informal conference, oral argument, additional

written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses) an evidentiary hearing. The administrative law judge may order all proceedings that are otherwise available under Rule 8(d) of the Commission's Rules of Practice. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the Commission's position was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

* * * * *

15. By revising § 201.59 to read as follows:

§ 201.59 Payment of award.

An applicant seeking payment of an award shall submit to the Comptroller of the Commission a copy of the Commission's final decision granting the award, accompanied by a sworn statement that the applicant will not seek review of the decision in the United States courts. The Commission will pay the amount awarded to the applicant as authorized by law, unless judicial review of the award has been sought by the applicant.

By the Commission.

Jonathan G. Katz,

Secretary.

March 15, 1989.

Securities and Exchange Commission Regulatory Flexibility Act Certification

I, David Ruder, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed revised rules implementing the Equal Access to Justice Act, set forth in Securities Act Release No. 33-6827, if promulgated, will not have a significant economic impact on a substantial number of small entities. The rules will not have a significant economic impact because the rules are procedural and do not affect small entities' eligibility for fee awards. In addition, the rules do not affect a substantial number of small entities because very few EAJA applications are received by the Commission.

David S. Ruder,

Chairman.

Dated: March 15, 1989.

[FR Doc. 89-6881 Filed 3-22-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Data and Information To Be Made Available to the Public

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: Rules governing release of proprietary geological and geophysical data and information from oil and gas and sulphur leases in the Outer Continental Shelf provide discretion to the Director of the Minerals Management Service (MMS) to release proprietary data under certain circumstances which are identified in the rule. The MMS believes that the governing rule should better define the limited circumstances under which discretionary release of data or information may be possible and the persons to whom the data and information may be made available. This proposed rule better defines the conditions under which data or information may be made available to a limited group and identifies the persons to whom the data or information may be made available. The notice also proposes to eliminate the discretionary authority to release data or information for Government scientific or research purposes.

DATE: Comments must be received or postmarked by April 24, 1989.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; Mail Stop 646, Room 6A110; 12203 Sunrise Valley Drive; Reston, Virginia 22091; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards, (703) 648-7816.

SUPPLEMENTARY INFORMATION: The MMS rules governing the protection of proprietary geological and geophysical data and information specifically provide for discretionary release of such data and information to persons with a need to know when the Director determines that certain conditions exist. In actual practice, this discretionary authority has rarely been exercised, and, when it has been exercised, MMS has been required to interpret the regulations to better define the conditions under which the information may be made available. The MMS believes that the rules governing protection of proprietary data and information should better reflect actual practices concerning conditions under which the data and information may be made available to persons other than the lessee/operator who provided it and therefore is proposing rule changes which better define the limits placed upon the Director's discretionary authority to make geological and geophysical data and information available to fewer than all the public.

One set of circumstances under which data and information may be made available to a limited number of persons is when geological and geophysical data and information need to be made available to lessees of adjoining leases where operations on two or more leases are to be unitized to ensure orderly development for one or more competitive reservoirs. In cases where the release is permitted, the existing rule provides that the data and information can only be shown to persons with an interest in the issue. The proposed change in the regulation replaces the phrase "with a direct interest in the issue" with the phrase "with a direct interest in the affected lease, unitization agreement, or joint Development and Production Plan."

Another area where the old rule permits the Director to make proprietary data and information available to a limited number of persons involves instances where the geological or geophysical data and information are necessary for the conduct of specific scientific or research purposes for the Government. The MMS has found that where data or information needs to be made available for specific Government scientific or research purposes, it is normally possible to obtain the lessee's permission to make the data or information available to the persons who will conduct the scientific study or research. The current regulations limit the circumstances under which data and information can be made available to those instances where the competitive position of the lessee would not be unduly damaged. When it can be shown that the competitive position of the lessee will not be unduly damaged by making data or information available for Government scientific or research purposes, the lessee normally agrees to release the needed data or information for that purpose. This has occurred on occasions where proprietary data or information has been needed for scientific reports published by MMS or by other parties working under contract to MMS. In some instances, the lessee's agreement to the release of data or

information was based on limitations on the specific data or information which was to be made available. The MMS believes that working with the lessee in this manner is more effective and more suitable than continuing to provide the director with authority to make data and information available when the release of the data and information will not unduly harm the lessee's competitive position. Therefore, the provisions which previously allowed the Director to make data or information available for Government scientific or research purposes are proposed to be deleted.

The proposed changes to the regulations would adopt provisions which are within the authority of MMS under existing regulations. As a matter of policy, MMS will follow the proposed provisions during the comment period and until such time as final rules are issued. This action will permit MMS to now implement procedures to limit discretionary release of proprietary data and information while developing a final rule. The final rule will reflect comments received during the comment period.

Interested parties may submit comments on this rule change to the address given above.

The Department of the Interior (DOI) has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

The DOI has determined that this rule will have a positive effect on the economy and is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required.

The DOI has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

This proposed rule does not affect any information collection which requires approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Author: This document was prepared by John Mirabella, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: February 3, 1989.

Robert E. Kallman,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Part 250 is proposed to be amended as follows:

PART 250—[AMENDED]

1. The authority citation for 30 CFR 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95-372, 92 Stat. 629 (43 U.S.C. 1334).

2. In § 250.18, paragraphs (a) and (b)(4) are revised to read as follows:

§ 250.18 Data and information to be made available to the public.

(a) Except as provided in paragraph (c) of this section or in § 252.7 of this chapter, geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geological and geophysical information, submitted at any time pursuant to the requirements of this part, shall not be available for public inspection without the consent of the lessee as long as the lease remains in effect, or for a period of 10 years after the date of submission whichever is less, unless the Director determines that the data and information are needed to unitize operations on two or more leases, to ensure proper plans of development for competitive reservoirs, or to promote operational safety or protection of the environment, and the data and information are shown only to persons with a direct interest in the affected lease, unitization agreement, or joint Development and Production Plan.

(b) * * *

(4) For all leases, the data and information may be released if the Director determines that the data and information are needed to utilize operations on two or more leases, to ensure proper plans of development for competitive reservoirs, or to promote operational safety or protection of the environment, and the data and information are shown only to persons with a direct interest in the affected lease, unitization agreement, or joint Development and Production Plan.

* * * * *

[FR Doc. 89-6814 Filed 3-22-89; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Rebasing of Residential Treatment Center (RTC) Rates and Capped Amount

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed rule revises DoD 6010.8-R (32 CFR Part 199) which implements the Civilian Health and Medical Program of the Uniformed Services. The proposed rule establishes the methodology and procedures for rebasing Residential Treatment Center (RTC) rates implemented on December 1, 1988. The new rates will reflect increases in RTC costs attributable to the treatment of more severely disturbed children. The new rates will assure continued high quality care for CHAMPUS beneficiaries.

DATE: Written public comments must be received on or before April 24, 1989.

FOR FURTHER INFORMATION CONTACT: David E. Bennett, telephone (303)-361-3537.

ADDRESS: Send comments to Office of Program Development, OCHAMPUS, Aurora, Colorado 80045-6900.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8-R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

The agency's initial decision to change its reimbursement policy for Residential Treatment Center (RTC) care was brought about by a culmination of problems over the benefit dating back to as early as 1979. This included General Accounting Office (GAO) and Defense Audit Service (DAS) findings that led the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) to believe that its RTC payment system was not cost effective and needed revision. Under the previous system, RTCs were allowed to set their own per diem rates and to be reimbursed for unlimited professional fees and other ancillary charges. In order to achieve

consistency of practice, OCHAMPUS developed a reimbursement system which was: (1) Prospective; (2) uniform; (3) all-inclusive; and (4) administratively feasible for OCHAMPUS and the RTCs.

The rate established for each individual RTC reflected both the institutional and professional charges which were submitted per an OCHAMPUS request of October 18, 1985. The RTCs were specifically instructed to submit the charges of individual mental health providers who were not employed by or contracted by their facility, along with frequency of their occurrence.

OCHAMPUS attempted to implement the new reimbursement rates in April of 1986 by sending out new participation agreements to all CHAMPUS authorized RTCs notifying them of their individual rates and capped amount. The new reimbursement methodology was to go into effect on July 1, 1986. However, on June 30, 1986, OCHAMPUS was enjoined from implementing the proposed RTC payment methodology because of a civil action filed in the U.S. District Court for the District of Colorado by various interested parties. The District Court found on summary judgment that OCHAMPUS had failed to comply with the rulemaking provisions of the Administrative Procedures Act (APA). OCHAMPUS was, therefore, enjoined from implementing the revised participation agreement and reimbursement system until such time that the requirements of the APA were met.

The District Court's decision was appealed to the Tenth Circuit Court of Appeals. OCHAMPUS believed that it had requisite authority for issuing the new participation agreement; however, pending resolution of the appeal, OCHAMPUS complied with District Court's decision by publishing a proposed rule in the **Federal Register** on December 4, 1987, (52 FR 46098). This rule clarified RTC participation requirements and established a new reimbursement system for payment of RTCs. On January 19, 1988, the public comment period was formally extended to February 19, 1988, in the **Federal Register** (53 FR 1378) to ensure that all interested parties had an opportunity to make their views known.

As a result of the publication of the proposed rule, 23 distinct categories of comments were addressed and responded to in the final rule which was published in the **Federal Register** on August 1, 1988 (53 FR 28873). The rates developed under the new reimbursement system were a liberalization of the most favored rate concept under the old participation agreement. Under the terms of the old participation agreement, which was in use since 1977, the most favorable rate was considered synonymous with the lowest rate offered to any other individual or payor. Since the lowest rate was often alleged to represent artificially set state rates and rates provided to an insignificant amount of business, our approach was to establish a rate high enough to cover a reasonable portion of an RTC's total business based upon total patient days and charges to all payors.

The rate high enough to cover one-third of the total patient days was determined the most reasonable. It was felt that the rate of 33⅓ percent avoided subsidies and excessive profit-taking. The new per diem rates were based on the RTCs' actual charging practices during the base period of March 1, 1984, through February 28, 1985, and adjusted by appropriate annual Consumer Price Index-Urban (CPI–U) factors for medical care to bring them forward to February 29, 1988.

The new reimbursement system was to go into effect on September 1, 1988; however, on August 10, 1988, a lawsuit was filed in the U.S. District Court for the District of Colorado seeking to enjoin implementation of the new reimbursement system. Pursuant to a court order, OCHAMPUS met with the plaintiffs' attorney and representatives of the National Association of Psychiatric Treatment Centers for Children (NAPTCC) in an attempt to resolve without judicial intervention those conflicts that existed over the methodology. In order to accommodate the negotiation process and, if possible, to avoid an unnecessary hearing on a Motion for a Preliminary injunction if the matter could be resolved, the effective date of the RTC final rule was first postponed to October 1, 1988, (53 FR 33808, (September 1, 1988)) and later to December 1, 1988 (53 FR 38947, (October 4, 1988)).

Since August of 1988, OCHAMPUS staff and representatives from NAPTCC have engaged in serious discussions in person, by telephone, and by correspondence to resolve those major areas of dispute. Under a stipulation settlement both parties agreed to the following terms:

(1) The terms of the final rule published August 1, 1988, and revised October 4, 1988, shall become effective December 1, 1988.

(2) In going though this current rulemaking the rates determined under the final rule will be applied retroactively, as if the Rule were effective December 1, 1988, rather than the rates under the August 1, 1988, rule.

(3) NAPTCC agreed that OCHAMPUS had the legal authority to promulgate the methodology in the August 1, 1988, rule establishing reimbursement for RTCs.

(4) NAPTCC agreed not to challenge OCHAMPUS' legal authority in establishing: (a) an overall cap on RTC per diem reimbursement; (b) a rate high enough to cover one-third of an RTC's total patient days during the base period; (c) an index based on the (CPI–U) for medical care; (d) an all-inclusive rate for RTCs; (e) provisions restricting the status of CHAMPUS authorized independent providers so that they may not directly provide and bill for RTC care; and (f) provisions restricting the delivery of RTC care solely to CHAMPUS authorized RTCs.

(5) OCHAMPUS agreed to review additional data submitted by a cross-section of RTCs in support of "rebasing" the base period used in determining individual RTC reimbursement rates and the overall RTC limit on per diem charges (capped amount).

(6) Upon reaching a settlement both parties agreed to submit a joint motion to the 10th Circuit Court of Appeals requesting that it vacate the District Court's decision in *NAPTCC* v. *Weinberger*.

On November 3, 1988, NAPTCC submitted RTC cost and staffing data collected by the National Association of Private Psychiatric Hospitals (NAPPH). Upon analysis, the data was found to be inadequate to support NAPTCC's contention that the base period used by OCHAMPUS was not appropriate due to subsequent changes in the severity of the RTC patient case mix. The data was insufficient and riddled with inconsistencies. Since neither the accuracy nor consistency of the data could be verified, it was CHAMPUS' decision not to rebase.

However, OCHAMPUS staff agreed to meet with representatives of NAPTCC and their attorney on November 22, 1988, to discuss OCHAMPUS' decision not to rebase. OCHAMPUS officials provided NAPTCC one final opportunity to submit additional data for consideration. NAPTCC agreed to resolve the inconsistencies in the previous data submission and to provide additional information on 6 out of 12 OCHAMPUS designated RTCs.

The submitted data was found, in general, to be represenative of a substantial portion of the CHAMPUS RTC population and showed significant increases in core professional staff, in salary costs for those personnel, and in operating costs overall. Although a majority of these cost increases could be accounted for in the update factor

applied by OCHAMPUS to the original base period data, it was decided to proceed with rulemaking to "rebase" the RTC individual rates and payment cap.

Terms of the final rule published in the August 1, 1988, **Federal Register** (53 FR 28873) went into effect on December 1, 1988, with the understanding that OCHAMPUS would proceed with the proposed rulemaking to revise the final rule to establish a methodology and procedures for rebasing individual RTC rates and the overall per diem, all-inclusive, cap. In other words, the RTCs agreed to the rates established under the August 1, 1988, rule with the agency's assurance that their rates would be rebased and applied retroactively to December 1, 1988. OCHAMPUS elected to use the base period of July 1, 1987, through June 30, 1988, since it was: (1) Consistent with the time frames used in updating professional profiles; (2) representative of 1988 charging practices; and (3) prior to publication of the RTC final rule (August 1, 1988).

The 10th Circuit Court of Appeals, in an order dated December 16, 1988, remanded the appeal to the District Court with instructions to vacate the judgment appealed. On December 21, 1988, the judgment was vacated by the District Court. On December 14, 1988, the 1988 lawsuit was dismissed with prejudice.

The Agency's decision to rebase required the development of a detailed collection instrument in order to obtain the individual RTC data for the revised base period. The data collection form has been submitted to OMB for review and approval along with a detailed justification of its use. It is estimated that it will take 90 to 120 days for OMB approval. If OMB approval coincides with publication of the final rule, it will alleviate delay in rebasing of RTC rates.

The RTCs will be required to submit reimbursement data on all third-party payors for whom rates are established and what the accepted rates are, and the number of patient days actually provided at each rate. At a minimum, this will include all federal, state or local government agencies (including CHAMPUS), other private third-party payors and the general public. Individual private payors will not need to be identified. The RTCs will also be required to provide all separately billed charges (ancillary and professional), whether performed by employees and billed directly by the RTC, or performed and billed by independent professional providers in order to be included in the CHAMPUS determined all-inclusive rate. The average daily charge for these services must be based on a random sampling of patient clinical records representing at least 20 percent of total patient days during the base period. The data collection form is simplistic in design in order to minimize administrative burden on the RTCs.

The RTCs have become keenly aware of the data collection requirements of our prospective all-inclusive per diem system through the litigation process spanning over four years. Many of the RTCs may have already collected and computed their rates in anticipation of the settlement agreement. Most of the requested information should already be maintained by the facility for normal operation. OCHAMPUS staff have met with representatives from NAPTCC on several occasions during the negotiation process to discuss the RTC prospective reimbursement system and the data requirements necessary if OCHAMPUS should decide to rebase. The following data collection issues were addressed during these meetings: (1) Data elements required for rebasing; (2) availability of data requested; (3) time frames for publishing proposed and final rules necessary for rebasing; (4) time frames for receiving OMB approval for the collection form; and (5) frequency of collection. Upon entering into the settlement agreement, NAPTCC was aware of the data collection requirements necessary for rebasing.

The data collected from this instrument (form) will be used in calculating new prospective all-inclusive per diem rates and capped amount for CHAMPUS authorized RTCs. Under the new reimbursement system, one of the following two alternative methods will be used in determining individual RTC rates:

1. RTCs Participating in CHAMPUS During Base Period

The per deim rate for an RTC participating in CHAMPUS during the base period of July 1, 1987, through June 30, 1988, will be based on the actual charging practices during that 12-month period. The individual RTC rate will be the lower of either the CHAMPUS rate in effect on June 30, 1988, or the rate high enough to cover at least one-third of the total patient days of care provided by the RTC during the 12 months ending July 1, 1988. Under either methodology, the rate will be subject to a maximum cap.

2. RTCs New to CHAMPUS After June 30, 1988

For RTCs new to the CHAMPUS program, one of the following two alternative methods will be used in determining their individual rates:

A. The rates for an RTC which was in operation during the base period (July 1, 1987 through June 30, 1988) will be calculated based on the actual charging practices of the RTC during the 12 months ending July 1, 1988. The individual RTC rate will be the lower of either the CHAMPUS rate in effect on June 30, 1988, or the rate high enough to cover at least one-third of the total patient days of care provided by the RTC during the 12 months ending July 1, 1988. Under either methodology, the rate will be subject to maximum cap.

B. The rates for an RTC which began operation after June 30, 1988, or began operation before July 1, 1988, but had less than 6 months of operation by July 1, 1988, will be based on the actual charging practices during its first 6 to 12 consecutive months, which 6 months being the minimum time in operation for certification under the CHAMPUS program. A period of less than 12 months will be used only when the RTC has been in operation for less than 12 months. Once a full 12 months is available, the rate will be recalculated. The rates would be calculated the same as in A above, except a different base period would be used.

3. Calculation of Capped per diem Amount

During the negotiation process OCHAMPUS made it clear to NAPTCC representatives that the capped percentile might be set lower than the 80th percentile based on evaluation of the new base year data (July 1, 1987 through June 30, 1988). This allows the agency flexibility in determining a reasonable percentile for establishing its maximum daily charge for RTC cate. Under the new provision OCHAMPUS will establish a capped per diem amount not to exceed the 80th percentile of all established CHAMPUS RTC rates nationally, weighted by total CHAMPUS days provided at each rate during the period of July 1, 1987, rhrough June 30, 1988. The percentile used in calculating the capped amount will be based on an analysis of reimbursement information submitted by the RTCs and comments received during the proposed rule comment period. This percentile will be incorporated into the final rule.

The OCHAMPUS will be responsible for: (1) Sending out the data collection instrument to all CHAMPUS authorized RTCs; (2) answering all inquiries regarding the data collection; (3) compiling and analyzing the submitted data; (4) calculating the individual prospective all-inclusive per diem rates and the capped amount for individual RTCs; and (5) sending out revised RTC participation agreements with the revised rates. In order for the "rebasing"

effort to succeed, it will be necessary to have the complete cooperation of all CHAMPUS participating RTCs and NAPTCC.

In FR Doc. 88–22842 appearing in the Federal Register on October 4, 1988 (53 FR 38947), the grandfathering provisions were revised to allow all CHAMPUS beneficiaries who were patients in CHAMPUS-approved RTCs as of November 30, 1988, to have their claims reimbursed on the same basis and conditions and at the same rates as were in effect on November 30, 1988, until the beneficiaries are discharged, transferred, or the care is no longer determined medically necessary. This change: (1) Assured continuity of care; (2) maintained the primary therapist-patient relationship; and (3) was consistent with Fiscal Year 1988 House Armed Services Committee language. Under the grandfathering provisions RTCs could be receiving payment under two distinct reimbursement methodologies based on date of admission. Those patients admitted prior to December 1, 1988, would be reimbursed under the old system, while those patients admitted on or after December 1, 1988, would be subject to the CHAMPUS per diem rates established under the December 1, 1988, final rule. RTCs will continue to be reimbursed at these prospective per diem amounts until new rates are established using revised base year data (July 1, 1987 through June 30, 1988). The revised per diem rates will be applied retroactive to December 1, 1988. The CHAMPUS contractors (insurance companies responsible for processing CHAMPUS claims) will reprocess and make appropriate adjustments on all claims for CHAMPUS patients admitted on or after December 1, 1988. It is anticipated that in most, if not all cases, the rebased rates will be higher than those established under the August 1, 1988, rule resulting in additional RTC payments. However, if there should be an instance where the rebased rate is lower than the one established under the August 1, 1988, rule, OCHAMPUS will not seek retroactive recoupment, but will give the RTC the benefit of the higher rate until such time as a new participation agreement is signed into effect. RTCs who were authorized after the lawsuit was resolved will be subject to the same terms and conditions as those parties to the lawsuit. There rates will be rebased and adjusted unless they began operation during or after the new base period (July 1, 1987 through June 30, 1988).

Dependents of retirees and the U.S. Government will be held harmless for increases in cost-sharing resulting from retroactive increases in RTC per diem rates. This simply means that RTCs will not be able to go back and bill dependents of retirees or the government for increases in cost-sharing resulting from retroactive adjustments. The differential in cost-sharing will be absorbed by the RTCs.

The new rates will: (1) Provide the potential for control over rapidly increasing costs for mental health care within the Department of Defense; (2) ensure that CHAMPUS beneficiaries are not subject to exaggerated or unjustified costs for RTC care solely because of the CHAMPUS entitlement; (3) provide for a rate of reimbursement for all participating RTCs which reflects a reasonable amount consistent with rates charged by their peers nationally and with reimbursement they are accepting from other third-party payors; and (4) reflect the increases in core professional staff, in salary costs for those personnel, and overall operating costs experienced by RTCs since February of 1985.

Regulatory Flexibility Act

Less than 0.13 percent of CHAMPUS institutional providers and less than 0.04 percent of CHAMPUS individual professional providers will be affected by this amendment. Although several independent professional providers have expressed concerns over the new system and the potential impact on their method of doing business, approximately 98 percent of the currently approved RTCs have indicated that they will continue their participation under the new prospective all-inclusive per diem system. In fact, OCHAMPUS has received a number of requests from new RTCs seeking certification under the program. Since the net impact on both institutional and professional components of RTC care will not be significant, the Secretary certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. It is not, therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR, Part 199, is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.14 is amended by revising paragraphs (f)(1) and (f)(2) to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(f) * * *

(1) The all-inclusive per diem rate for RTCs operating or participating in CHAMPUS during the base period of July 1, 1987, through June 30, 1988, will be the lowest of the following conditions:

(i) The CHAMPUS rate paid to the RTC for all-inclusive services as of June 30, 1988; or

(ii) The per diem rate accepted by the RTC from any other agency or organization (public or private) that is high enough to cover one-third of the total patient days during the 12-month period ending June 30, 1988; or

(iii) An OCHAMPUS determined capped per diem amount not to exceed the 80th percentile of all established CHAMPUS RTC rates nationally, weighted by total CHAMPUS days provided at each rate during the base period discussed in paragraph (f)(1) of this section.

(2) The all-inclusive per diem rates for RTCs which began operation after June 30, 1988, or began operation before June 30, 1988, but had less than 6 months of operation by June 30, 1988, will be calculated based on the lower of the per diem rate accepted by the RTC that is high enough to cover one-third of the total patient days during its first 6 to 12 consecutive months of operation, or the OCHAMPUS determined capped amount. A period of less than 12 months will be used only when the RTC has been in operation for less than 12 months. Once a full 12 months is available, the rate will be recalculated.

* * * * *

L.M. Bynum,

Alternate OSD Federal Register Liaison, Officer, Department of Defense.

March 20, 1989.

[FR Doc. 89–6934 Filed 3–22–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

Oil and Gas Resources

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On January 23, 1989, at 54 FR 3326, the Secretary of Agriculture published a notice of proposed rulemaking to govern oil and gas leasing on the National Forest System. The public was asked to submit views on the rules by March 24, 1989. Many industry and trade associations have requested additional time to prepare comments on this proposed rulemaking, primarily because the rules address a new role for the Forest Service and new procedures, and industry finds that the 60-day review period is not sufficient time to review and digest new rules that could have such an impact on their industry. In response, the agency has decided to extend the comment period. Accordingly, the public comment period on the proposed oil and gas leasing rules is hereby extended by 60 days to May 23, 1989.

DATE: Comments now must be received on or before May 23, 1989.

ADDRESS: Send written comments to F. Dale Robertson, Chief (2820), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Stanley W. Kurcaba, Minerals and Geology Management Staff (703) 235–9715.

Date: March 17, 1989.

F. Dale Robertson,

Chief, Forest Service.

[FR Doc. 89–6876 Filed 3–22–89; 8:45 am]

BILLING CODE 3410–11–M

POSTAL SERVICE

39 CFR Part 111

Mailability of Etiologic Agents

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: On June 24, 1988 the Postal Service published in the **Federal Register** a proposal to prohibit the mailing of etiologic agents, or material reasonably believed to contain etiologic agents, which are required to bear an Etiologic Agents/Biomedical Material label under Department of Transportation and Department of Health and Human Services rules. Etiologic agents are defined as viable microorganisms or their toxins which cause, or may cause, human disease. Because of a potential significant increase of etiologic agent materials in the mail, the Postal Service considered that the potential contamination of other mail through spills and leakage warranted a proposal to prohibit the mailing of all etiologic materials.

After review of all the comments, however, and after further consultation with the Centers for Disease Control of the U.S. Department of Health and Human Services, and the Office of Hazardous Materials Transportation, U. S. Department of Transportation, the Postal Service now proposes to continue to accept etiologic agent material under more restricted conditions. These restrictions relate to the purpose of the mailings, the quantity allowed, and the packaging method.

DATE: Comments must be received on or before May 22, 1989.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, Rates and Classification Department, Room 8430, 475 L'Enfant Plaza West, SW., Washington DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. F. E. Gardner, (202) 268–5178.

SUPPLEMENTARY INFORMATION: On June 24, 1988, the Postal Service published in the **Federal Register** for comment (53 FR 23775) its proposal, as explained in the Summary. Interested persons were invited to submit comments concerning the proposal by August 8, 1988, subsequently extended to August 22, 1988 (53 FR 30452).

Almost 600 comments were received from the medical community, airline representatives, postal unions and individuals.

The views of ten commenters, who generally favored the proposed prohibition of mailing etiologic agents, were as follows:

Airline representatives supported the proposal, but urged that the International Civil Aviation Organization (ICAO), *Technical Instruction For The Safe Transport Of Dangerous Goods By Air*, is a more comprehensive and more suitable benchmark than the Department of Transportation (DOT) and Department of Health and Human Services (HHS) rules, which Postal Services regulations incorporate by reference, and on which Postal Service regulations are based. Moreover, they urged the Postal Service to ban all hazardous material, because in their view, the postal system is not equipped for the complex procedures necessary to screen, accept, and handle packages. The Postal Service has revised its proposal to follow more closely the substance of the ICAO Technical Instruction for the definition and packaging of etiologic agents, and will require triple packaging as recommended by the airline comments. However, we are not satisfied that all hazardous materials should be banned from the mails as proposed, and in light of other comments summarized later in this document, find that there is a demonstrated need to keep the mails open to certain medical shipments.

A postal union commenter advocated that all agents of biological warfare be declared nonmailable. He argued that procedures for verifying compliance with packaging and labeling rules are insufficient, and emergency response procedures are inadequate. The commenter said, however, that not all etiologic agents should be nonmailable, as existing requirements, if followed, are adequate to protect postal workers and the public. The commenter suggested that there should be a separate class of mail for etiologic agents, with rates high enough to cover the associated costs of training, inspection, and emergency response. The Postal Service considers that the volume of this mail in relation to the total daily volume of mail is so small as not to warrant a separate mail class for ratemaking purposes.

A packaging material supplier concurred with the proposed ban, and suggested that the use of the ICAO rules for packaging and labeling of infectious substances (etiologic agents), as proposed by the airlines, be incorporated in postal rules for noninfectious diagnostic specimens and biological products.

Five other commenters supported the proposed ban on mailings of etiologic agents, with one expressing a strong desire to continue the mailing of properly packaged diagnostic specimens and biological products.

Another 182 comments from doctors and patients requested that allergenic extracts be excluded from the proposed ban. These extracts are used by patients with allergies, and are said to be sterile and noninfectious. The Postal Service understands that allergenic extracts are not classified as etiologic agents, and therefore would not be covered by the proposed ban.

The balance of approximately 400 comments were from individual doctors, hospitals, medical laboratories, colleges and universities, medical centers, associations and colleges of pathologists and biologists, state and Federal health agencies and individuals. These comments in general made the following points:

1. The proposed ban would have a negative impact on diagnostic, and medical research and laboratory

certification capabilities (proficiency testing).

2. There has been no prior record of injury involving the spill or leak of an etiologic agent in transportation in over 25 years. There have been at least 100,000 shipments of etiologic agents per year without incident.

3. The proposed ban would increase transportation costs by 10 to 15 times, and reduce or eliminate effective response time for diagnostic purposes as well as adversely affect medical research and education.

4. In practice, the ban would lead to improperly identified and packaged shipments being made thereby increasing the risk to the public and postal employees.

5. Biological warfare agents should be treated as a separate issue from the mailing of well packaged materials which are critical to medical care and public health.

In view of the comments, the Postal Service has revised its proposal so that shipments for medical purposes will continue to be accepted with certain limitations. This revision continues to exclude items relating to biological weapons and other non-health-related materials from the mail. The new proposal would also limit the amount of etiologic agents to 50 milliliters (1.666 fluid ounces) per parcel, and would require a third container (an outer shipping container) in addition to the presently required primary and secondary containers. The small quantity of etiologic agents and the extra packaging is expected to further reduce the likelihood and gravity of any leakage of these materials. In addition, under the proposal a parcel required to bear an Etiologic Agents/Biomedical Material label must be sent by First-Class Mail, priority mail, or Express Mail. This requirement will reduce the number of handlings by postal employees and move the material through the system expeditiously. In addition to being more specific in the definitions of diagnostic specimens and biological products, the Postal Service proposes to adopt the term "clinical specimens" in place of "diagnostic specimens," since that is the term favored by the Centers for Disease Control.

With these changes, the regulation will help to minimize the possibility of injury to postal employees or others from shipments of etiologic material through the mail, without impinging unnecessarily on the ability of the medical community to conduct important research and testing.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b),(c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service again invites public comments on the following proposed amendments of Part 124 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C., 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Amend 124.38 of the Domestic Mail Manual to read as follows:

PART 124 NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

* * * * *

124.3 Hazardous Matter

* * * * *

124.38 Etiologic Agents, Clinical Specimens & Biological Products

124.381 General. Etiologic agents, etiologic agent preparations, clinical specimens and biological products are nonmailable, except when their intended use is for medical use, research or laboratory certification related to public health, and when it is determined that such items are properly prepared for mailing to withstand shocks, pressure changes, and other conditions incident to ordinary handling in transit.

124.382 Definitions. a. Etiologic agent means a microbiological agent or its toxin that causes, or may cause, human or animal disease.

b. Etiologic agent preparation means a culture or suspension of an etiologic agent and includes purified or partially purified spores or toxins that are themselves etiologic agents.

d. Clinical specimen means any human or animal material including, but not limited to, excreta, secreta, blood and its components, tissue, and tissue fluids.

e. Biological product means a biological product which must be prepared and manufactured in accordance with the provisions of 9 CFR Parts 102–104 and 21 CFR Parts 312 and 600–680, in order to be shipped in interstate commerce.

124.383 Packaging. a. Etiologic Agents and Etiologic Agent Preparations. (1) Etiologic agents and etiologic agent preparations must be prepared to conform to 42 CFR, Part 72, must meet the packaging requirements of 49 CFR 173.387(b), and must not exceed 50 milliliters (ml) (1.666 fluid ounces) per outside package. Sufficient outage must be provided so that the primary container will not be liquid full at 130° F (55 °C).

(2) The material must be packaged in a securely sealed and watertight primary container (test tube, vial, etc.,) enclosed in a second sealed and watertight durable container (secondary container). Several primary containers may be enclosed in a single secondary container if the total liquid volume of all the enclosed primary containers does not exceed 50 ml.

(3) The space at the top, bottom, and sides between the primary and secondary containers must contain sufficient absorbent cushioning material to absorb the entire contents in case of breakage or leakage.

(4) Each set of the primary and secondary containers must be enclosed in an outer shipping container constructed of fiberboard or material of equivalent strength. In addition to complying with the requirements of 42 CFR Part 72, each package containing an etiologic agent or etiologic agent preparation must be designed and constructed so that, if it where subject to the environmental and test conditions prescribed in 49 CFR 173.387, there would be no release of the contents to the environment, and no significant reduction in the effectiveness of the packaging.

(5) To expedite delivery and reduce handling, a parcel containing material required by 42 CFR Part 72 to bear an Etiologic Agents/Biomedical Material label must be sent by First-Class Mail, priority mail, or Express Mail.

b. Clinical Specimens and Biological Products. (1) Clinical specimens which are not reasonably believed to contain an etiologic agent, such as urine and blood specimens used in drug testing programs or for insurance purposes, and biological products that contain or may contain etiologic agents, such as polio vaccine, must be packaged as specified in 124.383a(2)-(4).

(2) Single primary containers must not contain more than 1,000 ml (1 quart) of material. Two or more primary containers whose combined volumes do not exceed 1,000 ml may be placed in a single secondary container.

(3) The maximum amount of clinical specimens which may be enclosed in a single outer shipping container must not exceed 4,000 ml (4 quarts).

124.384 Medical Waste & Unsterilized Containers. Medical waste and unsterilized containers or devices are subject to the same conditions that apply to the material with which they were associated, e.g., a used hypodermic needle or an unsterilized device used in a surgical procedure which is being returned to a manufacturer because it malfunctioned.

124.385 Improperly Prepared, Damaged Mailings. Refuse nonmailable materials in accordance with 124.126. Report improperly prepared packages or damaged mailings in accordance with 124.127 and 124.128.

124.386 Marking & Labeling. a. When applicable, the outer containers must have required labels affixed, e.g., the Etiologic Agents/Biomedical Material label required by 42 CFR Part 72 and the infectious substances label as required by 137.3 of the International Mail Manual.

b. The outside container of clinical specimens and biological products must be marked to identify the contents, e.g., Clinical Urine Specimen.

c. Generally, all outside containers containing more than 5 pounds of dry ice (carbon dioxide solid) that are eligible for air transportation must have a shipper's declaration for dangerous goods attached in triplicate. See 124.24 and 124.392. (Upon fulfillment of the conditions in 124.386c(1)-(3) below, the marking "ORM-A UN 1845 Carbon Dioxide Solid" or "Dry Ice" is not required. See 49 CFR 173.615 and 175.10(a)(13)). However, a shipper's declaration for dry ice is not required provided that:

(1) The weight of the dry ice in the package does not exceed 5 pounds and the net weight of the dry ice is marked on the package;

(2) The dry ice is a refrigerant for a material being used for diagnostic or treatment purposes, e.g., Frozen Medical Specimens, and the material is so marked on the package; and

(3) The Package is marked "Carbon Dioxide Solid" or "Dry Ice".

Note: Packages containing dry ice must be designed and constructed to permit the release of carbon dioxide gas to prevent a build-up of pressure that could rupture the packaging.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-6884 Filed 3-22-89; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATION COMMISSION

47 CFR Part 73

[MM Docket No. 89-46; FCC 89-71]

Policies To Encourage Interference Reduction Between AM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On its own motion the FCC has initiated this action inviting comments upon a proposal to amend certain of its processing rules and practices to facilitate interference reduction efforts by AM licensees.

DATES: Comments must be filed on or before May 8, 1989, and reply comments on or before May 23, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Diane L. Hofbauer, Policy and Rules Division, Mass Media Bureau, (202) 254-3394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in MM Docket No. 89-46, adopted February 22, 1989, and released March 17, 1989.

The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this *Notice of Proposed Rule Making* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making ("NPRM")

1. As part of its continuing efforts to improve the AM broadcast service, the Commission issued this *NPRM* to solicit comment upon proposed changes to its processing rules and practices that could encourage AM licensees to engage in interference reduction efforts.

2. The *NPRM* includes a lengthy discussion of the evolution of the Commission's technical interference criteria for AM stations, as well as changes in the broadcast marketplace that suggest the need for improvements in AM service. The *NPRM* notes that the Commission has recently undertaken several other rule making proceedings to evaluate specific technical regulations governing AM stations, and the proposals contained in the instant proceeding are designed to enchance the benefits that may be derived from those proceedings.

3. In this *NPRM* the Commission proposes certain changes to its Rules and procedures to encourage AM licensees to institute changes to reduce the amount of interference which has accrued under the current technical rules. The Commission limits its proposal to permitting those activities between licensees that would *reduce* interference to one or more stations.

4. Many AM stations have voluntarily accepted interference within the nominal contours specified in the Commission's Rules. The Commission granted applications involving such higher levels of interference so long as the applicant demonstrated that it would be able to provide the minimum requisite service to its community of license. The station's original decision to accept this level of interference was based upon the circumstances then in effect. The *NPRM* suggests that it may be beneficial to allow some flexibility in the application of the Commission's interference standards to allow licensees to adjust to changes in demographics as well as to changes in the broadcast market. This would permit AM licensees to improve service by reducing interference, and, where feasible, allowing stations to provide stronger signals to interstation areas that may need improved service.

5. Therefore, the Commission proposes to permit an AM licensee to reduce the area encompassed by its protected contour for the benefit of reducing interference to another station or otherwise permitting an overall improvement in interference-free service. Licensees reducing their coverage will still be required, however, to meet the city coverage requirements as set forth in § 73.24 of the Commission's rules. Thus, daytime operation must maintain daytime city coverage requirements, and nighttime operations from AM stations other than Class II-S or Class III-S stations must meet nighttime city coverage requirements.

6. Many changes in facilities are already permitted under current rules. These include reducing power, altering antenna configuration, reducing tower height, or changing antenna sites. The licensee is required to notify the Commission of, and seek approval for, any such changes. Thus, under current rules, nothing prevents licensees from working cooperatively to reduce interference, nor do the Rules prohibit payment of costs or additional consideration by any licensee in return for such "cooperative" changes.

Furthermore, licensees are not required to inform the Commission of any such arrangements—the licensee is required only to seek approval of the actual changes proposed. Requests for approval of the types of changes discussed above are treated as minor change applications. *See* 47 CFR 73.3571. Even significant reductions in power are currently treated as minor changes, provided that the licensee continues to provide the minimum level of service to its community of license as required by the Commission's rules.

7. Furthermore, under current Rules, a licensee may even surrender its license for the benefit of reducing interference to another licensee. This could result in overall improved service to the public from the stations remaining on the air because interference from the former station would be eliminated completely. While this could result in a marginal reduction in the number of AM stations received in a particular area, reducing interference in the congested AM band can lead to improved reception and better overall AM service to the public.

8. When a station surrenders its license, however, it is not deleted immediately from the Commission's records. The Commission's current practice is to grandfather the radiation and protection rights off stations that have gone of the air for various reasons by maintaining those rights for a period of one year while accepting applications for a "replacement" station. Adherence to this practice of grandfathering radiation and protection rights of former AM stations, however, sometimes places the Commission in the position of perpetuating AM stations that do not meet current interference criteria. It is the Commission's intention to discontinue the practice of grandfathering rediation and protection rights in this manner in the future.

9. The Commission's objective of improving the AM service by reducing interference between stations will be furthered by deleting stations that have surrendered their licenses from the Commission records. Thus, new proposals filed subsequent to a deletion will not be permitted to cause prohibited overlap of daytime contours of the remaining stations, and nighttime proposals will be examined based upon the recalculated interference reference ("RSS") values for the AM stations remaining on the air. *See* 47 CFR 73.182. Comment is sought upon this proposal. Furthermore, to preserve its options in this regard, the Commission states that it will not accept applications from parties seeking to replace or otherwise utilize the former radiation and protection rights of any station that surrenders its license during the pendency of this rule making proceeding.

10. The Commission also proposes to accept contingent applications—that is, one or more applications seeking license modifications contingent upon Commission approval of another licensee's request for license modifications—filed to effectuate interference reduction efforts. The Commission has traditionally refused to accept contingent applications because such applications are speculative and unduly impede the introduction of new and modified service by other parties. The *NPRM* proposes to amend the Rules to allow the Commission to accept routinely a particular category of contingent applications where the proposed changes will result in interference reduction or otherwise permit an improvement in interference-free service. In this manner, licensees can endeavor to improve overall service by coordinating station modifications and having their coordinated efforts reviewed by the Commission simultaneously when determining whether to grant the proposed modifications.

11. The Commission notes that it does not expect a widespread occurrence of the use of contingent applications. Given the nature of the AM service, while there may be numerous situations presenting opportunities to reduce interference, the FCC foresees comparatively few instances in which a licensee participating in an interference reduction arrangement could increase its power as a result of another licensee's efforts to reduce interference. The *NPRM* does not propose to allow any increased interference to any AM station's protected contour. Thus, while limited opportunities for power increases by an AM licensee may arise if another station reduces power or directionalizes, the Commission expects that the largest number of opportunities for power increases—and thus the incentive to file a contingent application—will arise in cases where a licensee surrenders its license altogether.

12. Because of the point-to-point methodology used to calculate RSS values pertaining to nighttime interference, the Commission anticipates very few opportunities for power increases at night even in the event a station were to go off the air. Upon deletion of the station, the nighttime RSS limits for the AM stations remaining on the air would be recalculated. Subsequently, all stations, including those participating in any contingent arrangements, will be required to comply with the recalculated RSS values.

13. In addition, under current procedures, there appear to be few instances where two or more licensees could reach an interference reduction arrangement because a third party not participating in such efforts might prevail as a competing applicant. Because applications proposing increases in power are currently treated as major changes, they are subject both to the public notice and comment procedures of § 73.3580 of the Rules, and to competing mutually exclusive applications and petitions to deny. However, the possibility of competing applications may well prevent licensees from participating in the arrangements necessary to create opportunities for improved service. While the public could realize significant benefits from arrangements whereby one station reduces power, thereby reducing interference to a number of AM stations and, in limited circumstances, allowing another station to increase its power to better serve its audience, there is no incentive for such arrangements under our current procedures because the latter station will face potential competing applications when it seeks a power increase.

14. Therefore, the Commission proposes that if two or more licensees submit contingent applications to implement interference reduction arrangements, any applicant(s) seeking power increases or other modifications that depend upon the contingency as part of the interference reduction arrangement will not be subject to competing applications from third parties with respect to the opportunities created by the contingent arrangements. Such applications will, however, remain subject to the public notice requirements. In this regard, the Commission proposes to amend § 73.3517, which restricts the Commission's acceptance of contingent applications, and § 73.3571, which governs the processing of AM applications, as specified below. In addition, the Commission proposes to amend § 73.1750 to require a licensee that is surrendering its license pursuant to an interference reduction arrangement contingent upon another licensee's application for modification of facilities, to file a notice of intent to surrender, specifying the contingency, as set forth below. Comment is sought upon the proposed amendments.

15. Under the changes proposed above, the Commission would not

examine third party proposals filed after the contingent applications by other parties that would not protect the currently authorized facilities of the contingent applicants, because to do so would interfere with the operation of the AM marketplace without compensating benefits to the public. Rather, the Commission proposes to review the terms and conditions of specific contingent applications for construction permits for facility modifications to determine whether grant of the contingent applications is in the public interest. To the extent that any of the contingent applications proposes a major change as defined in its Rules, the public will have the full opportunity to comment. While the Commission will consider objections to the proposed modifications raised by any comments, whether or not some alternative license modification proffered by a third party would confer greater public benefits will not be considered in the contingent application process. The Commission's determination of whether to grant the contingent applications will be based solely upon the issue of whether the public interest benefits to be gained by the proposals justify the requested modifications.

16. The changes to Commission Rules and practices outlined above could provide important opportunities for licensees to obtain reductions in current interference levels, provide for more uniform coverage, and generally improve the quality of AM service. Such changes, however, carry with them certain implications with respect to the provision of local service. Thus, the Commission believes that it may be desirable to develop a mechanism for ensuring that modifications do not result in a loss of local service that would be detrimental to the public interest. Therefore, it proposes to establish a "service floor"—a level of service that must be maintained subsequent to any changes in facilities.

17. The Commission seeks comment upon the appropriate parameters of such a service floor. For example, it seeks comment upon whether the service floor should be defined solely in terms of reception of services (i.e., the number of stations a listener can still receive), or whether the Commission should also consider transmission service (i.e., the number of other stations licensed to a community losing a local station). The *NPRM* notes that the Commission has traditionally been most concerned with first and second full-time aural services. An appropriate floor may be established in the form of a requirement that licensees not create any new "white" or "grey" service areas. Or, some other limitation may be more appropriate, such as prohibiting licensees from eliminating any third or fourth service. The Commission also seeks comment upon whether other services such as commercial FM services should be taken into account when determining whether the services available to a community meet the service floor.

18. A licensee seeking to reduce its service area would file an application with the Commission for a construction permit to modify its facilities. This application may be filed alone, or in conjunction with one or more other contingent applications. In any case, such an application could include a certification by the applicant(s) that the level of service provided to the area(s) that may experience reduced service would not fall below the service floor described above. Alternatively, the applicant could be required to include an exhibit consisting of contour maps documenting that the requisite number of signals would continue to be available to the areas affected by the interference reduction. Applications meeting this test and that are otherwise acceptable would be granted.

19. In all other respects, applications for modifications to facilities, whether single or contingent, will be processed in the usual manner at the Commission. Once an application for modification of facilities for one or more licensees has been granted, the information used to calculate the interference protection ratios for the affected stations is automatically modified in the Commission's records to reflect the changes in facilities. Any future applicants for new or modified services will be required to protect the remaining stations to the recalculated interference protection level. Thus, the increased protection derived from any interference reduction will automatically be enforced by application of the Commission's current procedures.

Comments

20. Pursuant to applicable procedures set forth in § 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 8, 1989, and reply comments on or before May 23, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Non-restricted Rule Making

21. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Initial Regulatory Flexibility Analysis

22. With reference to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the proposed rule will, if promulgated, have a beneficial impact upon AM broadcast stations due to the anticipated reduction in the overall level of interference in the AM service. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete *Notice of Proposed Rule Making.*

23. The Secretary of the Commission is directed to send a copy of the *Notice of Proposed Rule Making* in this proceeding to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Paperwork Reduction Act Statement

24. The proposed rule changes have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain new or modified form, information, collection and/or record keeping, labeling, disclosure, or record retention requirements. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

25. Authority for the rule changes upon which comments are invited is contained in sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 73 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 73—[AMENDED]

26. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

27. It is proposed to amend § 73.1750 to add the following language at the end:

§ 73.1750 Discontinuance of operation.

* * * If a licensee surrenders its license pursuant to an interference reduction arrangement, and its surrender is contingent upon the grant of another application, the licensee surrendering its license must identify in

its notification the contingencies involved.

28. It is proposed to amend § 73.3517 by adding new paragraph (c) to read as follows:

§ 73.3517 Contingent applications.

* * * * *

(c) Upon payment of the filing fees prescribed in § 1.1111 of this chapter, the Commission will accept two or more applications filed by existing AM licensees for modification of facilities that are contingent upon each other, if granting such contingent applications will reduce interference to one or more AM stations or will otherwise improve interference-free service. The applications must state that they are filed pursuant to an interference reduction arrangement and must cross-reference the other contingent applications.

29. It is proposed to amend § 73.3571 by adding new paragraph (c)(1) to read as follows, and to add and reserve (c)(2):

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(c) * * *

(1) In order to grant major change applications made contingent upon the grant of another licensee's request for a facility modification, the Commission will not consider mutually exclusive applications by other parties that would not protect the currently authorized facilities of the contingent applicants. Such major change applications remain, however, subject to the provisions of §§ 73.3580 and 1.1111. The Commission shall grant contingent requests for construction permits for station modifications only upon finding that such action will promote the public interest, convenience and necessity.

(2) [Reserved]

* * * * *

[FR Doc. 89-6824 Filed 3-22-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

Conferring Designated Port Status on Portland, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to confer designated port status on Portland, Oregon, pursuant to section 9(f) of the Endangered Species Act of 1973. Designated port status would allow the direct importation and exportation of fish and wildlife, including parts and products, through Portland, Oregon, a growing international port. Under this proposed rule, 50 CFR 14.12 would be amended to add Portland, Oregon, to the list of Customs ports of entry designated for the importation and exportation of wildlife. A public hearing on this proposal will be held on April 17, 1989, in the Regional Office of the Fish and Wildlife Service, Portland, Oregon.

DATES: Comments must be submitted on or before April 24, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038-8006. Prior to April 17, 1989, comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, Room 300, Hamilton Building, 1375 K Street NW., Washington, DC, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. After April 17, 1989, comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 5th Floor, Arlington Square Building, 4401 North Fairfax Street, Arlington, Virginia, between the hours of 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Special Agent Michael Sutton at the above address ((202) 343-9242 or FTS 343-9242), or Special Agent David L. McMullen, Assistant Regional Director, U.S. Fish and Wildlife Service, 847 NE. 19th Avenue, Suite 225, Portland, Oregon 97232 ((503) 231-6125 or FTS 429-6125).

SUPPLEMENTARY INFORMATION:

Background

Designated ports are the cornerstones of the process by which the Fish and Wildlife Service regulates the importation and exportation of wildlife in the United States. With limited exceptions, all fish or wildlife must be imported and exported through such ports as required by section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f). The Secretary of the Interior is responsible for designating these ports by regulation, with the approval of the Secretary of the Treasury after notice and the opportunity for public hearing.

On January 4, 1974, the Service promulgated final rules designating eight Customs ports of entry for the importation and exportation of wildlife (39 FR 1158). A ninth port was added on September 1, 1981, when final rules were published naming Dallas/Fort Worth, Texas, a designated port (46 FR 43834).

Need for Proposed Rulemaking

Containerized air and ocean cargo has become the paramount means by which both live wildlife and wildlife products are transported into and out of the United States. The use of containerized cargo by the airline and shipping industries has compounded the problems encountered by the Service and by wildlife importers and exporters in the Portland area. In many instances, foreign suppliers will containerize entire shipments and route them directly to Portland. If, upon arrival, the shipment contains any wildlife, those items must be shipped under Customs bond to a designated port for clearance. In most cases, this has involved shipping wildlife products to Seattle, Washington, the nearest designated port, but reshipment has been both time consuming and expensive. To alleviate this problem, Portland area importers and exporters have attempted to direct entire shipments, even though they contain only a small number of wildlife items, to a designated port prior to their arrival at Portland. This method of shipment meets the current regulatory requirements of the Service; however, it is again time consuming and entails additional expense. It is also counter to the increasing tendency of foreign suppliers to ship consignments directly to regional ports such as Portland. In addition, time is a key element when transporting live wildlife and perishable wildlife products. Without designated port status, businesses in Portland cannot import and export wildlife products directly, and consequently may be unable to compete economically with merchants in other international trading centers located in designated ports.

With airborne and maritime shipments into and out of Portland steadily increasing, the Service has concluded that the port should be designated for wildlife imports and exports. Conferring this status on Portland would serve not only the interests of businesses in the region, but would also facilitate the mission of the Service in two ways. First, clearance of wildlife shipments in Portland would relieve inspectors at the port of Seattle, who are now handling cargo for both ports. Second, with the development of the Service's National Wildlife Forensics Laboratory in Ashland, Oregon, shipments of wildlife products into and out of Oregon are expected to increase dramatically as the laboratory becomes operational and begins to

handle evidence from a variety of sources.

Notice of Public Hearing

Section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f)(1), requires that the public be given an opportunity to comment at a public hearing prior to the Secretary of the Interior conferring designated port status on any port.

Accordingly, the Service has scheduled a public hearing for April 17, 1989, from 9:00 a.m. to 12:00 Noon. The hearing will be held in the Regional Office, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, 16th Floor, Portland, Oregon. All interested persons wishing to present oral or written testimony at this hearing must advise the Service in writing by April 14, 1989. All such requests must be submitted in writing to: Assistant Regional Director, U.S. Fish and Wildlife Service, 847 NE. 19th Avenue, Suite 225, Portland, Oregon 97232. Two (2) copies of the testimony should be submitted with each request.

Note.—The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this proposed rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The only effect of this rule will be to make it easier for businesses to import and export wildlife directly through Portland, Oregon. This proposed rule does not contain any information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These proposed changes in the regulations in Part 14 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act procedures under 516 DM 6, Appendix 1, sections 1.4(A)(1) and 1.5.

Author

The primary author of this proposed rule is Special Agent Michael Sutton, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects in 50 CFR Part 14

Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for Part 14 is revised to read as follows:

Authority: 18 U.S.C. 42; 16 U.S.C. 337–3378; 16 U.S.C. 1538(d)–(f), 1540(f); 16 U.S.C. 1382; 16 U.S.C. 704, 712; 31 U.S.C. 483(a); 16 U.S.C. 4223–4244, unless otherwise noted.

2. Section 14.12(h) is amended by removing the word "and".

3. Section 14.12(i) is amended by removing the period and adding the word "and" preceded by a semicolon.

4. Section 14.12 is amended by adding the following new paragraph (j):

§ 14.12 Designated Ports.

* * * * *

(j) Portland, Oregon.

Date: February 14, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–6865 Filed 3–22–89; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90111–9042]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA issues this proposed rule to implement one measure of Amendment 9 (amendment) to the "Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978" (FMP). This measure would authorize inseason reporting requirements for commercial salmon fishermen to provide timely accounting of catches from any regulatory area subject to quota management. The proposed rule to implement the other measures of Amendment 9 has been published separately. The purpose of the reporting requirement is to better ensure accurate assessment of catches relative to attainment of salmon quotas during the fishing season.

DATE: Comments on the inseason reporting requirement measure of the amendment and on this proposed rule must be received by April 5, 1989.

ADDRESSES: Comments should be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731–7415. Copies of the amendment, including the environmental assessment and the regulatory impact review/initial regulatory flexibility analysis, are available from the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW First Avenue, Portland, OR 97201–5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206–526–6140, Rodney R. McInnis (Southwest Region, NMFS), 213–514–6199, or Lawrence D. Six (Pacific Fishery Management Council), 503–326–6352.

SUPPLEMENTARY INFORMATION:

Background

Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), the FMP was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) on March 2, 1978. Since then, the FMP has been amended eight times, with implementing regulations codified at 50 CFR Part 661. From 1979 to 1983, the FMP was amended annually. In 1984, a framework amendment to the FMP was implemented which provided a mechanism for making preseason and inseason adjustments in the regulations without annual FMP amendments (49 FR 43679, October 31, 1984). Amendments to the framework FMP were also implemented in 1987 and 1988.

Development of Amendment 9 began in September 1987 when a "scoping session" was held by the Council. Subsequent Council discussions identified six issues requiring further analyses and possible modifications to the FMP. A draft amendment was prepared and distributed to interested persons for review on October 14, 1988. Comments were invited, and five public hearings were held on November 2 and 3, 1988 (53 FR 41222, October 20, 1988).

After considering the comments received on the draft amendment at public hearings and Council meetings, and from its Salmon Technical Team, Salmon Advisory Subpanel, Scientific and Statistical Committee, and Enforcement Consultants, the Council made its final selection of preferred alternatives for the amendment at its November 16–18, 1988, meeting in Portland, Oregon. The Council selected

non-status quo alternatives for the six issues.

The major purposes of Amendment 9 are to (1) replace the long-term spawning escapement goal and rebuilding schedule for Klamath River fall chinook with fixed annual spawning escapement and harvest rates which will allow a fixed percentage from each brood of natural spawners to escape the fisheries and spawn, subject to a minimum escapement floor for naturally spawning adults; (2) modify the ocean harvest allocation of coho and chinook between non-Indian commercial and recreational fisheries north of Cape Falcon, Oregon; (3) revise the coastwide notice procedures for inseason management actions; (4) conform Federal and State regulations regarding the incidental harvest of steelhead by recreational fishermen; (5) authorize inseason reporting requirements for commercial fishermen to provide timely accounting of catches from a regulatory area subject to quota management; and (6) remove the limitations on commercial and recreational season beginning and and ending dates. The rationale for the Council's proposed FMP changes for items (1)–(4) and item (6), and a discussion of related issues and expected biological and socioeconomic impacts, are presented in a separate proposed rule for these parts. This rule was published January 19, 1989 (54 FR 2177). The rationale, issues, and impacts for item (5) are summarized below.

Amendment Issue 5—Radio Reporting Requirements for Commercial Salmon Fishermen

The fishery management regime specified annually under the FMP establishes numerical catch quotas (by salmon species) for designated regulatory areas. Such catch quotas are necessary to ensure that the allowable levels of ocean harvest of salmon are not exceeded in these areas. In order to accurately assess catches relative to quota attainment during the fishing season, catch data by regulatory area must be collected in a timely manner. Difficulties in tracking catches by regulatory area arise when commercial fishermen with catches from one regulatory area land their catches in another regulatory area open to fishing.

In 1988, the Council discussed the need for amending the FMP to require the commercial fishing vessels which possess salmon taken in the area north of Cape Falcon, Oregon (a regulatory area subject to quota management), and deliver to a port outside of the area, notify the U.S. Coast Guard and receive acknowledgment of such notification prior to leaving the area. The notification would include the name of the vessel, port where delivery would be made, approximate amount of salmon (by species) on board, and estimated time of arrival.

Also in 1988, the Washington Department of Fisheries and the Oregon Department of Fish and Wildlife implemented this type of inseason reporting requirement in State waters for their fishermen in order to obtain better real-time catch data critically needed for more careful monitoring of season quotas. Specifically, commercial fishing vessels (from Oregon and Washington) possessing salmon taken in the regulatory area north of Cape Falcon, Oregon, and delivering to a port outside of the area, were required by the States to notify the U.S. Coast Guard and receive acknowledgment of such notification prior to leaving the area. The notification included the name of the vessel, port where delivery would be made, approximate amount of salmon (by species) on board, regulatory area where fish were caught, and estimated time of arrival. According to the U.S. Coast Guard, approximately 89 radio reports were received during the 1988 fishing season off the Washington and Oregon coasts. During and after the 1988 fishing season, no public objections were received by the States regarding this type of reporting requirement.

Prior to Amendment 9, the FMP did not authorize any Federal reporting requirements, recognizing that most of the catch and effort data necessary for FMP implementation are collected by the State agencies under existing data collection programs. The FMP still generally acknowledges that no additional catch reports will be required of fishermen so long as data collection and reporting systems operated by the State agencies continue to provide the Secretary with statistical information adequate for management. However, in Amendment 9, the Council determined that the information collected through the proposed inseason radio reporting requirement is essential for the conservation of the salmon resources and achievement of the optimum biological and economic yields from the fishery during the fishing season (May through October). In order to accurately assess catches relative to quota attainment during the fishing season, catch data by regulatory area must be collected in a timely manner. Therefore, the Council proposes to implement Federal radio reporting requirements for commercial fishermen to provide such timely and accurate accounting of catches in regulatory areas subject to quota management. The real-time catch information collected from the radio reports will improve the ability of the managers to attain and enforce regulatory area salmon quotas. The current State data collection programs do not regularly collect the specific type of information which the Councils recommended be collected by the inseason radio reports.

The proposed collection-of-information will require commercial fishermen leaving a regulatory area subject to quota management, and landing their catches in another regulatory area open to fishing, to transmit radio reports to the U.S. Coast Guard (or other designated party) prior to leaving the first regulatory area. The information collected will consist of the name of the vessel, port where delivery will be made, regulatory area where fish were caught, approximate amount of salmon on board (by species), and estimated time of arrival. Because the exact boundaries of the regulatory areas subject to these reporting requirements may change annually, certain contents of the radio reports, and possibly the entity receiving the reports, may have to be adjusted annually.

The information collected on vessel name, port of delivery, and estimated time of arrival will be provided to State fishery managers to facilitate monitoring of the actual catch reports submitted in accordance with State landing requirements under existing State data collection and reporting systems. The appropriate Federal and State entities will verify the accuracy of the information collected by comparing the radio reports with the catch reports (fish tickets) submitted in accordance with State landing requirements under existing State data collection and reporting systems.

The council's proposed measure involves a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and to review and approval by the Office of Management and Budget (OMB). A request to collect this information has been submitted to OMB approval and the issuance of a control number. Because of the time requirements associated with OMB's review and approval, this part of the proposed rule implementing Amendment 9 is being published separately for public review and comment. It is intended that, after receiving and considering public comment, it will be combined with the rest of the final rule.

Classification

Section 304(a)(1)(A) of the Magnuson Act requires the Secretary, upon

receiving a fishery management plan or plan amendment prepared by a Council, to make a preliminary evaluation for purposes of deciding if it is consistent with the national standards and sufficient in scope and substance to warrant review. The Secretary has decided Amendment 9 does warrant review. A notice of availability of Amendment 9 (including all amendment measures) for public review and comment was published January 3, 1989 (54 FR 49). Under section 304(a)(1)(D)(ii) of the Magnuson Act, the Secretary is to publish proposed regulations by the 15th day after the statutory receipt date for the amendment. The proposed rule for all amendment measures except for this collection-of-information requirement was published January 19, 1989 (54 FR 2177). The Secretary has approved Amendment 9. In so doing, he determined that the inseason reporting measure of Amendment 9 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, took into account the data, views, and comments received during the comment period on the proposed amendment.

The Council prepared an environmental assessment for Amendment 9 which indicates that there will be no significant impact on the environment as a result of this rule. The environmental assessment has been published in a booklet with Amendment 9 and may be obtained from the Council at the address listed above.

The Under Secretary of Oceans and Atmosphere has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination was based on analysis of the regulatory impact review (RIR) prepared for this rule which demonstrates that the rule will not result in (1) an annual major increase in costs or prices for consumers, individual industries, or government agencies; (2) an annual effect on the economy of $100 million or more; and (3) significant adverse effect on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Based on the Council's initial regulatory flexibility analysis (IRFA), this proposed rule implementing the collection-of-information requirement, if adopted, will not have a significant economic impact on a substantial number of small business entities for purposes of the Regulatory Flexibility Act (RFA). Some of the other proposed management measures of Amendment 9 were anticipated to have a significant economic impact on a substantial number of small business entities for purposes of the Regulatory Flexibility Act, thus requiring preparation of the IRFA. The RIR/IRFA may be obtained from the Council at the address listed above.

The economic impacts associated with the inseason reporting requirement measure were evaluated in the RIR/IRFA and are summarized below. All such impacts apply to small business entities because this industry consists only of small entities. A summary of the economic impacts associated with the other amendment measures was published in a separate proposed rule for these measures (54 FR 2177).

Amendment Issue 5—Radio Reporting Requirements for Commercial Salmon Fishermen

The socio-economic costs and benefits are difficult to quantify due to the variability of the annual management measures for the commercial salmon fishery.

Because most fishermen return to the nearest port to land when a regulatory area closes to fishing, only a small number of commercial salmon fishermen would likely be impacted by this type of reporting requirements—the exact number will depend on the specific reporting requirements implemented each year. During the past two years, the similar reporting requirements implemented by the States have undergone public review during the preseason process prior to the Council's adoption of annual management measures. It appears these reporting requirements have general acceptance by commercial salmon fishermen which increases the likelihood of their enforceability.

The inseason radio reporting requirement contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget for approval as provided by section 3504(h) of the PRA.

Given the specific nature of the collection-of-information, in most cases the respondents will be submitting their radio reports during time-in-transit from the fishing grounds at zero cost to the respondents. The collection-of-information would not impose additional operating expenses to the respondents because their normal operations include maintaining catch records for State reporting requirements and operating a radio to monitor, receive, and transmit broadcasts. In those instances when respondents are taken away from wage-earning functions, such as cleaning fish or other maintenance duties, the estimated costs to the respondents would be based on the wage of $20 per hour. Using the estimate that 20 percent of the 50 total estimated burden hours (i.e., 10 hours) would impose actual costs to respondents and the hourly wage of $20, total annual costs to all respondents are estimated to be $200 (or an average of $1 for each of the estimated 200 respondents, annually).

The public reporting burden for this collection of information is estimated to average 0.25 hours per response, inducing the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Rolland A. Schmitten, director, Northwest Region, NMFS, 7600 Sand Point Way NW., BIN C15700, Seattle, WA 98115–0070; and to the Office of the Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 20, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 661 is amended to read as follows:

PART 661—[AMENDED]

1. The authority citation for 50 CFR Part 661 continues to read as follows:

Authority: 16 U.S.C. 1810 *et seq.*

2. In § 661.4, in paragraph (a), in the second sentence, the words "Except as provided in paragraph (b) of this section," are added at the beginning, and the word "No" is revised to read "no"; paragraph (b) is redesignated as (c); and a new paragraph (b) is added to read as follows:

§ 661.4 Reporting requirements.

* * * * *

(b) Persons engaged in commercial fishing may be required to submit catch reports which are specified annually under § 661.20.

* * * * *

3. In § 661.20, a new paragraph (a)(1)(iii) is added to read as follows:

§ 661.20 Annual actions.

(a) * * *

(1) * * *

(iii) Reporting Requirements.

* * * * *

Appendix—[Amended]

4. In the Appendix, in section II.B., a new paragraph 12 is added to read as follows:

12. Reporting requirements for commercial fishing may be imposed as necessary to ensure timely and accurate assessment of catches in regulatory areas subject to quota management. Such reports are subject to the limitations described herein. Persons engaged in commercial fishing in a regulatory area subject to quota management and landing their catch in another regulatory area open to fishing may be required to transmit a brief radio report prior to leaving the first regulatory area. The regulatory areas subject to these reporting requirements, the contents of the radio reports, and the entities receiving the reports will be specified annually.

* * * * *

[FR Doc. 89-6941 Filed 3-21-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 55
Thursday, March 23, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Other Tobacco; National Marketing Quota for Cigar-Filler (Type 46) Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice of determination.

SUMMARY: National marketing quotas for cigar-filler (type 46) tobacco for the 1989–90, 1990–91, and 1991–92 marketing years and the amount of the quota for such kind of tobacco for the 1989–90 marketing year are required by the Agricultural Adjustment Act of 1938, as amended, to be proclaimed by March 1, 1989. Accordingly, this notice sets forth the proclamation of a zero quota for such kind of tobacco for the 1989–90 marketing year and the factors used in making this determination.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, USDA, Room 3736–South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established to implement Executive Order 12291 and Department Regulation 1512–1 and has been classified as "not major." The matters under consideration will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice applies to are: Title—Commodity Loan and Purchases, Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

In accordance with section 312 of the Agricultural Adjustment Act of 1938, as amended (the Act), the Secretary of Agriculture is require to proclaim marketing quotas for cigar-filler (type 46) tobacco. In accordance with this Act, it is not possible to proclaim a national marketing quota greater than zero. Accordingly, no other option may be considered with respect to the proclamation of such quota for the 1989–90 marketing year. According, no Regulatory Impact Analysis will be prepared.

Section 312(a) of the Act provides that the Secretary shall, not later than March 1 of any marketing year with respect to this kind of tobacco, proclaim a national marketing quota for each of the next three succeeding marketing years whenever the Secretary determines with respect to such kind of tobacco that the total supply of tobacco exceeds the reserve supply level.

Section 301(b) of the Act defines the "total supply" of cigar-filler (type 46) tobacco as the carryover at the beginning of the current marketing year (October 1, 1988) plus the estimated 1988 production in the United States. Therefore, the total supply of cigar-filler (type 46) tobacco for the 1988–89 marketing year is 4.4 million pounds based on beginning stocks of 4.2 million pounds and 1988 production of 0.2 million pounds.

Since the total supply of cigar-filler (type 46) tobacco exceeds the reserve supply level, the Secretary of Agriculture must, by March 1, 1989, proclaim national marketing quotas for the 1989–90, 1990–91, and 1991–92 marketing years and determine and announce the amount of the national marketing quota which would be in effect for the 1989–90 marketing year for this kind of tobacco.

In addition, the Secretary is required to conduct, within 30 days after the proclamation of such national marketing quotas, a referendum of farmers engaged in the 1988 production of such kind of tobacco in order to determine whether they favor or oppose marketing quotas for such years.

Definitions

Section 301(c) of the Act defines the reserve supply level as the normal supply plus 5 percent thereof. The normal supply is defined as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption plus 65 percent of a normal year's exports. A normal year's domestic consumption is defined as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A normal year's exports is defined as the average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The yearly average quantity of cigar-filler (type 46) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1988–89 marketing year was approximately 1.2 million pounds. None was exported during this time. Domestic use has shown a downward trend. Accordingly, a normal year's domestic consumption has been set at 0.7 million pounds while a normal year's exports have been set at 0.0 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 2.0 million pounds.

Manufacturers and dealers reported stocks of cigar-filler (type 46) tobacco

held on October 1, 1988, of 4.2 million pounds. The 1988 cigar-filler (type 46) tobacco crop is estimated to be 0.2 million pounds. Therefore, the total supply of cigar-filler (type 46) tobacco for the 1988–89 marketing year is 4.4 million pounds. During the 1988–89 marketing year, it is estimated that disappearance will total approximately 0.7 million pounds. By deducting this disappearance from the total supply, a carryover of 3.7 million pounds at the beginning of the 1989–90 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1989 is −1.7 million pounds. Because the estimated carryover at the beginning of the 1989–90 marketing year exceeds the reserve supply level, the quantity of cigar-filler (type 46) tobacco which may be marketed during the 1989–90 marketing year is zero.

In accordance with section 313(g) of the Act, the 1989–90 national marketing quota for cigar-filler (type 46) tobacco is zero. Accordingly, the national acreage allotment for such tobacco is zero.

Pursuant to the provisions of section 313(g) of the Act, the national acreage factor is 0.00.

Determinations

Proclamation of National Marketing Quotas for Cigar-Filler (Type 46) Tobacco

Because the total supply for the 1988–89 marketing year exceeds the reserve stock level, a national marketing quota for such kind of tobacco for each of the three marketing years, beginning October 1, 1989, October 1, 1990, and October 1, 1991, is hereby proclaimed.

Determinations 1989–90 Marketing Year

For cigar-filler (type 46) tobacco for the marketing year beginning October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for cigar-filler (type 46) tobacco for the 1988–89 marketing year is 2.0 million pounds.

(b) *Total supply.* The total supply of cigar-filler (type 46) tobacco for the marketing year beginning October 1, 1988, is 4.4 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler (type 46) tobacco for the marketing year beginning October 1, 1989, is 3.7 million pounds.

(d) *National marketing quota.* Because the estimated carryover at the beginning of the 1989–90 marketing year exceeds the reserve supply level, the quantity of cigar-filler (type 46) tobacco which may be marketed during the 1989–90 marketing year is zero.

(e) *National acreage allotment.* The national acreage allotment is 0.0 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotment is 0.0.

Authority: Secs. 301, 312, 313, 375, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 66, as amended (7 U.S.C. 1301, 1312, 1313, 1375).

Signed at Washington, DC on March 2, 1989.

Milton J. Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–6918 Filed 3–22–89; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Mendocino National Forest; Mendocino County, California; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to implement commerical timber sales within the Black Butte River watershed area on the Covelo Ranger District; this EIS will encompass a portion of the Black Butte (#05269) released-roadless area.

A range of alternatives for this area will be considered. One of these will be no road construction or timber harvest. Other alternatives will consider implementing intensive timber management activities (including harvest of timber and road construction) to low intensity timber management (minimal harvest with no road construction).

Federal and State, and local agencies; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the watershed.

The Forest Supervisor will hold a public meeting at the Legion Hall, Howard Street, Covelo, California, at 1:00 p.m., on April 18, 1989.

Daniel K. Chisholm, Forest Supervisor, Mendocino National Forest, is the responsible official.

The analysis is expected to take about 6 months. The draft environmental impact statement should be available for public review by January 17, 1990. The first environmental impact statement is scheduled for completion by April 18, 1990.

Written comments and suggestions concerning the analysis should be sent to Charles L. McFadin, District Ranger, Covelo Ranger District, Mendocino National Forest, Covelo, California, 95428, by May 17, 1989.

Questions about the proposed action and environmental impact statement should be directed to Brooks Smith, Timber/Resource Officer, Covelo Ranger District, Mendocino National Forest, Covelo, California, 95428, phone 707–983–6118.

Daniel K. Chisholm,

Forest Supervisor.

Date: March 14, 1989.

[FR Doc. 89–6841 Filed 3–22–89; 8:45 am]

BILLING CODE 3410–11–M

Plumas National Forest; SerCan Helicopter Timber Sale; Intent to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement to disclose the environmental consequences of the proposed SerCan Helicopter Timber Sale.

The SerCan Helicopter Timber Sale is on the Quincy Ranger District, near Quincy, Plumas County, California. Quincy is approximately ten air miles to the east. The Bucks Lake Wilderness borders the project area on the southwest. The proposed sale area is located above the Feather River Canyon, southwest of Virgilia, California in sections 13, 14, 22, 23, and 24, T25N, R7E; and sections 18, 19, 20, 29, and 30, T25N, R8E, Mount Diablo Meridian. This project area is within Rich Management Area #20 and includes a small portion (less than 50 acres) in Silver Management Area #21. These management areas have a timber emphasis with visual retention and partial retention requirements. Additionally, the western one half of the proposed project area is within a minimal management designation that would allow timber harvesting for unscheduled yields without forest regulation.

The proposed actions would use primarily helicopter systems to harvest approximately 15 MMBF of timber. Additionally, a small portion of the land base (less than 1% of the total acres) would be harvested with tractor yarding systems. The silvicultural prescriptions being considered for the project include even-aged and uneven-aged management. The uneven-aged management prescriptions would yield a very light harvest of five to seven MBF per acre. The primary objectives of this project are to reduce the average stand age and to encourage the establishment and growth of natural regeneration by removing a portion of the overmature trees. Approximately 2,210 acres would be treated. There would be approximately 1 mile of new temporary roads to be built and 5.7 miles of reconstruction.

A range of alternatives will be considered. One of these will consider a large project of 2,210 acres, and another a more condensed 1,270 acre project. We will also consider the no action alternative.

We invite other Federal agencies, state and local agencies, and interested individuals to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

Mary J. Coulombe, Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

The analysis is expected to take about 2 months. The draft environmental impact statement should be available for public review in June 1989. The final environmental impact statement is scheduled to be completed in October 1989.

Written comments and suggestions concerning the analysis should be sent to Robert L. Wilcox, District Ranger, Quincy Ranger District, P.O. Box 69, Quincy, CA 95971, by April 17, 1989. Questions about the proposed action and environmental impact statement should also be directed to him. The telephone number is (916) 283–0555.

Carl E. Summerfield,

Planning Officer.

March 14, 1989.

[FR Doc. 89–6829 Filed 3–22–89; 8:45 am]

BILLING CODE 3410–11–M

Outfitter and Guide Fees

AGENCY: Forest Service, USDA.

ACTION: Proposed adjustment in fees.

SUMMARY: The Forest Service hereby gives notice that it is proposing to adjust minimum fees for outfitting and guiding on National Forest System lands every 3 years based upon the Implicit Price Deflator. The Implicit Price Deflator index is published every February as a part of the "Economic Report of the President" to Congress. The intended effect is to ensure that fees accurately reflect fair market value as required by regulation.

DATE: Comments must be received on or before April 30, 1989.

ADDRESS: Send written comments to F. Dale Robertson, Chief (2710), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: John Shilling, Recreation Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. (202)–382–9426.

SUPPLEMENTARY INFORMATION: In 1984 (49 FR 5779), the Forest Service adopted major changes to its policy for managing special use permits for individuals or organizations conducting outfitting and guiding activities on the National Forests. As part of those changes, the Forest Service established a new system for determining the annual rental fees charged for conducting outfitting and guide service on National Forest System lands.

The fee system bases fees on either the outfitting's gross revenue or the outfitter's adjusted average service-day client charge, plus a set fee for the reserved use of National Forest System sites.

Office of Management and Budget Circular A-25 specifies that, "Where federally-owned resources or property are leased or sold, a fair market value should be obtained." when the new fee system was adopted in 1984, the minimum fair market value fee of an outfitting and guide permit was set at $50 and the charge for reserved use of a site at $100. Inflation has devalued these fixed amounts since 1984. The Forest Service is proposing that fees be increased based on the change in the Implicit Price Deflator, and beginning with fees due after March 1990 adjustments will be made in this manner every 3 years using 1984 as a base year.

Because of many areas of adjacent jurisdiction, the Forest Service and Bureau of Land Management coordinate their policies for managing outfitting and guiding activities. The Bureau of Land Management has informed the Forest Service that it also plans to make a similar proposal.

The Forest Service periodically meets with representatives of the North American Outfitters Association and the National Forest Recreation Association to discuss outfitting and guiding policy and management. Proposed fee increases were presented at a meeting with representatives of these associations in November 1988. Industry representatives have subsequently expressed concern about timely notice of this proposal. The Forest Service, therefore, has decided to issue the proposal for comment in the **Federal Register.**

The change in the minimum fee and the charge for reserved use of a site would be issued as an amendment to Forest Service Handbook 2709.11, the Special Uses Management Handbook.

Date: March 3, 1989.

Jerry A. Sesco,

Acting Chief.

[FR Doc. 89–6919 Filed 3–22–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency

Title: Business Development Report (BDR)

Form Number: Agency—NA; OMB—0640–0005

Type of Request: Revision of a currently approved collection

Burden: 100 respondents; 14,600 reporting hours

Average Hours Per Response: .75 hours per response

Needs and Uses: The BDR identifies minority business clients receiving Agency-sponsored management and technical assistance and the kind of assistance each receives. Agency needs this information for program evaluation, program planning and monitoring

Affected Public: Individuals or households, state or local government, businesses or other for-profit institutions, non-profit institutions, and small businesses or organizations

Frequency: Quarterly

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: John Griffen, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, 202/377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: March 17, 1989.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 89–6815 Filed 3–22–89; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of Export Administration

Biotechnology Technical Advisory Committee; Closed Meeting

A meeting of Biotechnology Technical Advisory Committee will be held April 21, 1989, 9:00 a.m. at the U.S. Army Medical Research Institute of Infectious Diseases, Building 1425, Main Conference Room, Ft. Detrick, Frederick, MD 21701–5011. The Committee advises the Office of Technology and Police Analysis, Bureau of Export Administration, with respect to technical questions that affect the level of export controls applicable to biotechnology and related equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 13, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information call Betty Anne Ferrell at (202) 377–2583.

Date: March 21, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–6892 Filed 3–22–89; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–570–801]

Final Determination of Sales at Less Than Fair Value; Certain Headwear From the People's Republic of China

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain headwear from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of certain headwear from the PRC. The U.S. International Trade Commission (FTC) will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: March 23, 1989.

FOR FURTHER INFORMATION CONTACT: Robin Gray or Anne D'Alauro (202) 377–1130, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that certain headwear from the PRC is being, or is likely to be, sold in the United States at less than fair value as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

On November 2, 1988, we made an affirmative preliminary determination (53 FR 45138). The following events have occurred since the publication of that notice.

On November 9, 1988, the PRC trading companies requested that we postpone making our final determination for a period of sixty days pursuant to section 735(a)(2)(A) of the Act. On November 17, 1988, we issued a notice postponing the final determination until March 17, 1989 (53 FR 47741).

We verified the questionnaire responses in the PRC between November 20 and December 12, 1988. The surrogate responses were verified in the Philippines on December 15–16, 1988.

On January 25, 1989, the Department held a public hearing. Petitioner and respondents also submitted comments for the record in prehearing briefs on January 23, 1989, and in posthearing briefs on February 9, 1989. An importer filed comments on November 8, 1988.

Scope of the Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the Tariff Schedules of the United States Annotated ("TSUSA") to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number. As with the TSUSA numbers, the HTS numbers are provided for convenience and Customs purposes. The written product description remains dispositive.

Imports covered by this investigation are caps, hats, and visors made from knitted or woven cloth of vegetable fibers including cotton, flax, and ramie, of man-made fibers, and/or of blends thereof, and which are cut and sewn. The subject headwear may be adorned with braid, embroidery, or other applied, printed or sewn decoration or may be plain. This investigation does not include headwear of straw, felt or wool. The products are classified under the TSUSA item numbers 702.0600, 702,0800, 702.1200, 702.1400, 702.2000, 702.3200, 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640, 703.1650, 384.0438, 384.0954, 384.2211, 384.2608, 384.2707, 384.2723, 384.2741, 384.2752, 384.2784, 384.2796, 384.3436, 384.5216, 384.5365, 384.5427, 384.5485, 384.5533, 384.5685, 384.5698, 384.8676, 384.9443, and under HTS item numbers 6505.90.15, 6505.90.20, 6505.90.25, 6505.90.90, 6505.90.50, 6505.90.70, 6505.90.60, 6505.90.80, 6114.20.00, 6211.42.00, 6114.30.30, 6211.43.00, 6204.23.00, 6204.29.40, 6211.32.00, 6211.49.00,

6211.39.00, 6204.22.30, 6204.29.20, 6209.20.50, 6209.30.30, 6209.90.30, 6209.90.40, 6214.90.00.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

The petitioner has argued that the PRC should be treated as a state-controlled economy for purposes of this investigation. The respondents claim that economic reforms in the PRC, particularly with respect to the headwear sector, have led to reductions of state-control that make a determination of foreign market value under section 773(a) of the Act both possible and appropriate.

We have examined information submitted by parties concerning this issue and have determined that, although the degree of state control has lessened, particulalry with respect to the production and exportation of headwear, the PRC is appropriately treated as a state-controlled economy for purposes of this investigation. In arriving at this determination the Department considered: (1) The degree of government ownership of the means of production, (2) the degree of centralized government control over allocation of resources or inputs, (3) the degree of centralized government control over output and (4) the relative convertibility of the country's currency and the degree of government control over trade. (See *Petroleum Wax Candles from the People's Republic of China*, 51 FR 25085, July 10, 1986.)

Despite the reforms that have been introduced, the Chinese government continues to own most of the assets in the Chinese economy. In the case of headwear, the eight trading company respondents are state-owned. Of the twenty-six factories producing headwear, four are state-owned, sixteen are collective-owned, and six are foreign-owned.

Since January 1, 1988, the branches of the national trading companies have operated as autonomous entities. According to the responses and information gathered at verification, neither the trading companies nor the factories report their business or production plans to the State. These facilities are responsible for their own profits and losses and are subject to PRC bankruptcy laws. After-tax profits go toward employee welfare and benefits, business expansion and retained earnings. Any losses that are incurred are financed out of retained earnings or borrowing.

Wile these factors suggest that decisions to invest assets in the production and exportation of headwear may be guided more by economic considerations than by the direction of the government, there are certain rigidities present in the system which militate against this conclusion. For example, state-owned entities channel after-tax profits into specified "funds," including business expansion, according to government-set or suggested percentages. Thus, as long as an entity remains profitable it will continue its operations without any apparent consideration of whether the assets may be more usefully employed in other lines of business. Also, we found no evidence that entities could sell their assets or discharge their ownership.

With respect to the degree of centralized government control over inputs, the major physical inputs used in producing the headwear under investigation are cotton and polyester. The decision of which inputs to use is based on customer specifications.

Most of the cotton used in headwear manufacturing is grown in the PRC and there is heavy government involvement in the production of cotton cloth. Not only is the State the largest purchaser of raw cotton (90 percent) but it is also the major consumer of cotton cloth (50 percent). Headwear producers purchase their cotton textiles from outside the government plan and are, therefore, able to choose their supplier and negotiate prices with that supplier, although the government provides suggested prices for informational purposes.

Despite the fact that cotton cloth purchased by headwear producers is outside the government plan, the large presence of the government in the production of cotton cloth would indicate that its actions affect the prices and quantities available for producers outside the plan. Given the government's involvement, we are not persuaded that there are sufficient market-like influences to determine that the prices paid by the headwear producers for cotton cloth are market-driven.

All polyester used by the headwear producers subject to the investigaton is imported. All such importations are made through state-owned trading companies and all headwear produced from the imported materials must be re-exported.

With respect to labor, there are indications of increased flexibility in the labor pool, although there is also evidence of continued rigidity. We saw evidence that workers could be fired and that employee bonuses were based on the profitability of the enterprise. Nevertheless, in many cases it appeared that wages were set by national and/or local labor bureaus and that "professional" employees, in particular, faced difficulties in moving from job-to-job.

Thus the extent of government control over the allocaton of inputs presents a mixed picture. While certain market-like phenomena are present, such as employee bonuses based on profits and the ability of headwear producers and headwear exporters to choose their suppliers and negotiate prices, the government continues to play an important role, directly or indirectly, in the allocation of inputs to the headwear sector.

The degree of centralized government control over outputs is also a mixed picture. Within the broad terms of their licenses, the trading companies are able to export the products they choose and to negotiate the prices they receive. The factories also appear capable of changing the products they produce, or at least the product mix, and to negotiate the prices they receive from the trading companies. At the same time, the decision to export headwear remains in the hands of the government because trade continues to be a state monopoly. While we found no evidence of specific quantity targets for the trading companies exporting headwear, they have recently entered into contracts with the State which specifies foreign exchange targets.

Finally, with respect to currency convertibility and government control over international trade, the government continues to maintain a monopoly in foreign trade, as noted above. This, in and of itself, does not necessarily mean that the PRC should be treated as a state-controlled economy, especially in light of the growing autonomy of the trading companies and the reduced import licensing requirements. For example, headwear is imported into the PRC and, therefore, the state monopoly in trade does not appear to shield domestic PRC producers from international competition. Moreover, one of the goals of the recently-introduced reforms in the headwear sector is that the trading companies will perform more as agents acting on behalf of PRC manufacturers, with the result that the manufacturing entities will be more directly involved in international trade.

With respect to currency convertibility, the renminbi is not internationally convertible and the government imposes tight controls on foreign exchange earned through exporting. Nevertheless, the recently-

introduced currency swap centers provide certain PRC enterprises with a "market" for buying or selling foreign exchange. For example, the trading companies involved in this investigation were able to retain a portion of their foreign exchange receipts in the form of exchange quotas, and these quotas could be sold in the swap markets or they could be used to purchase imports. At the same time, however, a large portion of the trading companies' foreign exchange earning was sold to the government at the official exchange rate and was not available to the trading companies. Even more limited access to foreign exchange was experienced by the factories producing headwear for export.

Based on the above, the Department believes that the Chinese foreign trade system is in transition. In many ways it is like a developing market economy country. On the other hand, many of respondents' claims are based on reforms that were instituted during the period of investigation. This makes questionable the extent to which these reforms could have had an impact on the prices in the sector during the same period. Moreover, we received a great deal of individual respondent information which did not support a uniform experience or conclusion.

These considerations, combined with evidence of continuing indirect control exercised by the Chinese government, lead us to determine that the headwear sector is state-controlled for purposes of this investigation. Such evidence of control is indicated by State mandated after-tax outlays and foreign exchange earning targets; the State monopoly on foreign trade; currency quota allocation; the involvement of the government in the cotton market as well as the limited convertibility of the currency. However, if future changes occur in these areas as a result of diminished government control, the Department will be willing to reconsider its conclusions in any future review, should this investigation result in an antidumping duty order.

There are two types of transactions involved in exporting the subject merchandise to the United States: processing fee and non-processing fee. Processing fee sales are those sales where the PRC factories are responsible only for converting supplied materials into finished headwear. Consistent with past practice, we have based United States price for the processing fee sales on the price received for the conversion. (See, *e.g., Small Diameter Welded Carbon Steel Pipes and Tubes from the Philippines, Final Determination of Sales at Less Than Fair Value,* (51 FR 33099, September 18, 1986), (*Pipes and Tubes from the Philippines*); *Brass Sheet and Strip from Canada, Final Determination of Sales at Less Than Fair Value,* (51 FR 44319, December 9, 1986), (*Canadian Brass Sheet and Strip*).) Foreign market value for processing fee sales was calculated by valuing the factors of production employed by the PRC manufacturers in performing the conversion in a non-state-controlled economy country, as described in the "Foreign Market Value" section of this notice.

For non-processing fee sales, the United States price is based on the prices charged by the PRC trading companies for finished headwear. The foreign market value for these sales has been calculated using PRC factors of production valued in a non-state-controlled economy, as described in the "Foreign Market Value" section of this notice.

United States Price

We used the purchase price of the subject merchandise to represent United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price of the subject merchandise as provided in section 772 of the Act, on the basis of the C&F or CIF prices with deductions, where applicable, for ocean freight, and marine insurance. An adjustment for taxes rebated on export was not added to U.S. price since the amount of rebate actually received could not be verified.

Foreign Market Value

As a result of our determination to treat the PRC as a state-controlled economy, section 773(c) of the Act requires us to base foreign market value on either the prices of, or the constructed value of, such or similar merchandise in a "non-state-controlled-economy" country.

Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should use information from a "non-state-controlled-economy" country at a stage of economic development comparable to the state-controlled-economy country.

As noted in the preliminary determination, we sent a questionnaire to, and received a response from a headwear producer in the Philippines. Since the preliminary determination we have received a supplemental response from this manufacturer and we were able to verify both response in December 1988.

We did not use information on domestic sales provided by this "surrogate" producer as the foreign market value for PRC sales of polyester headwear since the Department determined that the surrogate merchandise was not sufficiently similar to serve as a basis of comparison. For these sales, we constructed foreign market value by valuing the factors of production employed by the PRC manufacturers using factor cost information provided by the surrogate. This methodology was also utilized for sales of cotton hats with the exception of the cotton input. For the value of the cotton input, we based the factor information on the customs value of U.S. imports from Egypt. For processing fee sales, we constructed foreign market value by valuing the factors of production employed by the PRC manufacturers in performing the conversion using factor cost information provided by the surrogate. Foreign market value based on valuing factors of production includes the statutory minimum for SG&A and profit.

Currency Conversions

When evaluating U.S. sales made in Hong Kong dollars, we made currency conversions in accordance with § 353.56(a)(1) of our regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York. Because we did not have certified exchange rates from the Federal Reserve Bank of New York for the surrogate country data, as best information we used currency conversions based on monthly averages as provided by the International Monetary Fund.

Negative Determination of Critical Circumstances

Petitioner alleged that imports of headwater from the PRC present "critical circumstances." Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) there have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short

period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For purposes of this finding, we analyzed recent trade statistics on import levels for headwear from the PRC, for equal periods immediately preceding and following the filing of the petition until the month of our preliminary determination. Using this data, we find that there has been less than a one percent increase in imports of headwear following the initiation of this investigation.

Since we do not find that there have been massive imports, we need not consider whether there is a history of dumping or whether importers knew or should have known that it was being sold at less than fair value. Therefore, we determine that critical circumstances do not exist with respect to imports of headwear from the PRC. We have notified the ITC of this determination.

Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

General Comments

Comment 1. Both the petitioner and the respondents have commented on various methodological issues pertaining to the analysis if the Department had found the headwear sector to be non-state-controlled for the purposes of the investigation. These comments included whether the Department should use third country sales information and whether the Department should use the official exchange rate or the swap rate when making currency conversions.

Department's Position. Since the Department determined the headwear sector to be state-controlled, these comments are not addressed.

Petitioners' Comments

Comment 1. Petitioner argues that the PRC is a state-controlled economy and should be treated as such under the antidumping law.

Department's Position. We agree. See the "Foreign Market Value" section of this notice.

Comment 2. Petitioner argues that the Department has correctly chosen to use the surrogate information provided by a headwear manufacturer in the Philippines. In making its final determination, the Department should continue to use the home market sales made by the surrogate as the basis of foreign market value for non-processing fee sales.

Department's Position. Department regulations establish a preference for foreign market value of such or similar merchandise based upon sales prices prior to constructing a cost based value of the merchandise. At verification we confirmed that the Philippine home market sales consist exclusively of embroidered headwear. The Department verified the cost of information submitted by the surrogate producer including the cost of embroidery. The cost differences associated with embroidery were found to be of sufficient magnitude to preclude a reasonable comparison with sales of unembroidered headwear. Moreover, the Department is unable to make a determination as to the similarity of the embroidered headwear sold in the Philippines and that sold by the PRC because no factor information on the embroidery component, such as the number of stiches or the time involved, was provided by the PRC respondents producing embroidered headwear. Due to the limited number of sales of embroidered headwear sold by respondents in this investigation, in its final determination, the Department has disregarded these sales in its analysis. For all other sales, the Department has used the cost information supplied by the surrogate in valuing the factor information from the PRC respondents as described in the "Foreign Market Value" section of this notice.

Comment 3. The petitioner contends that the affirmative preliminary determination of critical circumstances for three specific trading companies should be expanded to include all of the PRC trading companies. In its preliminary determination the Department imputed "knowledge that dumping was occurring" to those three trading companies whose margins were greater than 25 percent. Since the PRC is a non-market economy country with central control and direction, the companies act in unison and knowledge is shared among them. Therefore, knowledge should be imputed to all of the state-owned trading companies. The petitioner also argues that it was appropriate to use a three month time period in evaluating whether massive imports existed for our determination of critical circumstances.

Department's Position. Although the Department relied on a three month period in making its preliminary affirmative critical circumstance determination, we have used the five months between the filing of the petition and the preliminary determination for our final determination. The Department uses this period between the filing of the petition and the preliminary determination to determine whether there are massive imports since this is the period during which respondents could take advantage of their knowledge of the dumping case to increase exports to the United States without being subject to dumping duties. See *Internal Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12566, April 15, 1988. During this time, the import statistics indicate that PRC headwear imports increased less than one percent. Having determined that imports during the period were not massive, the Department need not consider whether importers of this product knew or should have known that the merchandise from the PRC was being sold at less than fair value. (See the "Negative Determination of Critical Circumstances" section of this notice.)

Comment 4. Petitioner argues that the Department should issue one rate to all PRC trading companies or at most, two rates—one to China Arts and Crafts and one to China Light—because the State owns and controls all PRC trading companies. The establishment of nine rates with large margin variations facilitates circumvention in a state-controlled economy where exports can be easily directed and diverted among the trading companies by the State.

Department's Position. We disagree that one, or two, dumping margins should be calculated in this investigation. The former branches of the national trading companies have separated from the national companies and we found no evidence that the prices the branches charge for exports to the United States are set by or coordinated through the national trading companies. Therefore, it is appropriate to calculate separate margins for each of the now independent trading companies. Moreover, in past findings where different national trading companies exported to the United States, we calculated separate rates for these trading companies even though we treated the PRC as a state-controlled economy (See, *e.g.*, *Shop Towels from the People's Republic of China; Final Results of Administrative Review of Antidumping Duty Order* (50 FR 26020, June 24, 1985)).

Comment 5. Petitioner claims that because of the poor quality of the responses and the number of discrepancies found at verification, the Department should reject the questionnaire responses as inadequate and unreliable and use best information

available, *i.e.*, information provided by the petitioner. In addition, the Department should reject last minute revisions as unverified.

Department's Position. The majority of the information provided in the PRC companies' responses to the factors of production and sales questionnaires was verified. Some of the last minute filings referred to by the petitioner were made to place information on the record that was corrected at verification. Furthermore, any information submitted by the respondents that was not verified was not used in our final determination except in those instances where it was used as best information available.

Comment 6. Petitioner contends that the respondents have failed to provide information fully describing product codes and identifying which of the headwear exports are embroidered. Therefore, as best information available, the Department should assume one-third of all headwear imports are embroidered.

Department's Position. For all but one of the trading companies, Jiangsu Arts and Crafts, we were able to verify which headwear orders included embroidered hats based on our examination of representative sales documentation. For Jiangsu Arts and Crafts, where we were unable to identify specific sales which included embroidered headwear, information submitted by Jiangsu following verification mirrors the experience of the largest known exporter of embroidered headwear, *i.e.*, an insignificant percent of total sales. Due to the limited volume of sales involved, the Department has dropped these sales from its analysis.

Comment 7. The petitioner argues that the Department was correct in not considering Universal Hats and Caps Manufacturing Company, Ltd., and Universal Trading Company ("Universal") as well as Golden Crown as respondents in the investigation because these Hong Kong companies are not PRC manufacturers, producers or exporters of headwear. Furthermore, since the PRC trading companies must obtain export visas for all shipments to the United States, U.S. price is appropriately based on the PRC trading companies' prices given their knowledge that the merchandise is destined for the U.S. market.

Department's Position. We agree. See our response to Interested Party Comment 1.

Respondent's Comments

Comment 1. Respondents argue that the PRC headwear sector is not state-controlled.

Department's Position. We disagree. See discussion above in the "Foreign Market Value" section of this notice.

Comment 2. The Department should not use the surrogate country producer's domestic sales prices as the basis for foreign market value for the following reasons: (1) The volume of home market sales was too small to have been made in commercial quantities, (2) they were not in the ordinary course of trade, and (3) the sales price was extraordinarily high and totally unrepresentative of any fair measure of foreign market value. In addition, as the Department learned at verification, the surrogate's headwear was embroidered which significantly adds to the cost of producing the merchandise. Most of the headwear sold by the trading companies, however, is not embroidered. For these reasons, the Department should use the factor cost information for its constructed value of polyester baseball caps. Alternatively, the cost of embroidery should be deducted from the surrogate's price in the calculation of foreign market value, except for those sales of embroidered headwear.

Department's Position. The Department verified the cost information submitted by the surrogate including the cost of embroidery and from that information was able to determine that embroidered hats could not reasonably be compared to unembroidered hats. Since the number of embroidered headwear sales made by PRC respondents was insignificant, and the Department could not determine the similarity of PRC embroidered headwear with that of the surrogate, embroidered headwear sales have been dropped from our analysis. Because the Department has not used the home market sales of the surrogate for comparison purposes in our final determination, we have not addressed respondents' additional concerns about the home market.

Comment 3. Respondents claim that they provided information on which exports of Chinese headwear were embroidered and that this information should be utilized in making fair value comparisons.

Department's Position. See our response to petitioner's comment 6.

Comment 4. Respondents claim that critical circumstances do not exist because imports have not been massive. Further, the Department should not impute knowledge of sales at less than fair value to importers using results based on information supplied by a surrogate. This is a particularly unreasonable assumption in the case where a surrogate's home market price is being used for foreign market value. It is unlikely that importers of PRC headwear have knowledge that sales are being made at less than fair value based on knowledge of a particular surrogate's pricing practices in an industry where potential suppliers are numerous and prices from all such sources would need to be known.

Department's Position. The Department agrees that the requirements for an affirmative determination of critical circumstances have not been met. (See the "Negative Determination of Critical Circumstances" section of this notice.) For this reason, the Department need not consider the issue of the importers knowledge of sales at less than fair value.

Comment 5. Respondents claim that the Department incorrectly used the CIF value of Egyptian cotton for the cotton input cost in constructing foreign market value. The headwear factories in China purchase the cotton cloth domestically and do not incur any ocean freight or marine insurance charges. Since the CIF value includes ocean freight and marine insurance, the Department instead should use the FOB value of Egyptian cotton found on the same customs statistics.

Department's Position. We agree and have used the import value exclusive of transportation and insurance expenses for the cost of the cotton input in our final determination.

Comment 6. Respondents claim that the Department should utilize the verified revised labor hour calculations submitted prior to verification. In the initial responses the factories were only able to estimate the labor hour figures because of tight time limits. These estimates were considerably higher than the actual amounts.

Department's Position. The Department did receive a number of revised figures at the time of verification. In our final determination, we have accepted those revised figures which were submitted prior to the beginning of verification and which were acceptably verified.

Interested Party Comments

Comment 1. The interested party, Universal, argues that the Department is incorrect in refusing to investigate Universal's claim that it is manufacturer. Nonetheless, even if the Department does not accept Universal's contention that it is the manufacturer of the hats under investigation, Universal claims that it is at least acting as a trading company (where the manufacturer has no knowledge of the destination of the goods) and is entitled to a separate

determination. Because Universal contracts with the Chinese trading company prior to receiving specific orders from its U.S. and third country customers, Universal contends that at the time the contract is entered into neither the factory nor the PRC trading company knows where the hats will be exported.

Department's Position. Universal is a Hong Kong company which supplies materials to the PRC factories for conversion into headwear under processing fee arrangements with the PRC trading companies. As such, Universal is not a PRC manufacturer, producer, or exporter. In recent proceedings involving processing fee-like arrangements, we have treated the processor as the producer/manufacturer/exporter and have based United States price on the price paid for processing. [*See, e.g., Pipes and Tubes from the Philippines, Canadian Brass Sheet and Strip*].

Moreover, the Department does not agree with Universal's contention that trading companies did not have knowledge of the destination of the merchandise. Specifically, the PRC trading companies are aware that the processing fee sales are destined for the United States because they must supply the export visas required under the U.S.-PRC bilateral textile agreement. Consistent with Department practice, where a seller knows that the merchandise is destined for the United States, we base United States price on the price charged by the seller. The respondents in this investigation, some of whom supply Universal, have stated that they have knowledge of or can infer the destination of the merchandise. During the period of investigation, two of these suppliers did not have any third country sales and were producing exclusively for the U.S. market. For these reasons, we are not considering Universal as a respondent in this investigation.

Comment 2. Universal contends that the reasons the Department has given for finding the headwear sector to be state-controlled do not apply to the Universal factories. Because the Chinese state-owned trading companies serve merely as the issuer of the visas and financial intermediary for U.S. sales by Universal, and have no role in making sales to the U.S. or elsewhere for the Universal factories, there is no basis for finding foreign exchange targets for the Universal factories. With respect to currency convertibility, all of Universal's raw materials are purchased at arm's length from unrelated suppliers and the transactions are in hard currency. Moreover, all of Universal's transactions occur in U.S. dollars. Therefore, the convertibility or non-convertibility of the renminbi is completely inapplicable to sales from Universal's factories. Finally, all sales of the merchandise are negotiated between Universal and its customer in the United States. The Chinese state-owned trading companies do not act in the role of a trading company that negotiates sales. Therefore, because of the lack of state control over Universal's operations, the Department should analyze Universal's sales on the basis of normal, market-oriented dumping methodology.

Department's Position. Having determined that Universal is not a respondent in this investigation, we are concerned with the economic activity occurring within the PRC by respondents who are Universal's suppliers. We have determined that the headwear sector in the PRC is state-controlled for purposes of this investigation. For this reason, in our foreign market value construction, we utilized the factor information supplied by the PRC factories valued in a market economy. Specifically, foreign market value for the sales to Universal were valued using the factor information for conversion from factories investigated that supply Universal. Since these transactions involve only conversion, the fact that Universal purchased materials in a hard currency does not enter our analysis. U.S. price was the price charged Universal for conversion by the PRC trading company respondents.

Suspension of Liquidation

Since we have determined that critical circumstances do not exist with regard to this investigation, entries suspended prior to November 8, 1988, the date of publication of the preliminary determination in the **Federal Register**, can now be liquidated and all securities posted as a result of the suspension of liqudation prior to that date will be refunded or cancelled. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of headwear from the PRC that are entered, or withdrawn from warehouse, for consumption on or after November 8, 1988. The Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
China National Light Industrial Products Import and Export Corporation, Guangdong Branch, Travelling Goods Company	* 5.30
Guangdong Stationery & Sporting Products Import and Export Corporation	* 7.09
China National Light Industrial Products Import/Export Corporation, Guangzhou Branch Footwear and Headgear Company	* 32.06
Guangdon Arts & Crafts Imports and Exports Corporation	* 7.00
Jiangsu Arts & Crafts Imports & Exports Corporation	27.71
Shanghai Arts & Crafts Import & Export Corporation	16.27
Shanghai Stationery and Sporting Goods Import/Export Corporation	28.60
Zhejiang Arts & Crafts Import & Export Co.	22.20
All Others	21.37

* Because we made fair value comparisons on the basis of processing charges, the resulting differences for these companies have been multiplied by a coefficient equalling the proportion processing represents of the value of PRC hats to arrive at the margins for individual sales. The coefficient is based on our review of the cost and sales experience of Shanghai Stationery.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. However, if the ITC determines that such an injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on headwear from the PRC as defined in the "Scope of Investigation" section of this notice, entered or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

March 17, 1989.

[FR Doc. 89-6915 Filed 3-22-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-533-501]

Certain Iron Construction Castings From India; Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance With Decision Upon Remand

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of amendment to final determination of sales at less than fair value and antidumping duty order in accordance with decision upon remand.

SUMMARY: On April 27, 1988, the United States Court of International Trade (the Court) ordered the Department of Commerce (Commerce) to correct certain computational errors in its final antidumping duty determination on certain iron construction castings from India. *Alhambra Foundry Co. v. United States*, 12 CIT ___, 685 F. Supp. 1252 (1988). Commerce filed the required remand results with the Court on July 21, 1988. On November 22, 1988, the Court affirmed, in its entirety, the remand determination by Commerce. *Alhambra Foundry Co. v. United States*, 12 CIT ___, 700 F. Supp. 221 (1988).

In accordance with the Court's order, Commerce has directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise produced by Kejriwal Iron and Steel Works (Kejriwal), which are entered, or withdrawn from warehouse, for consumption on or after the day after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-1756.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 1986, Commerce published a notice of "Final Determination of Sales at Less Than Fair Value" in the case of certain iron construction castings from India (51 FR 9486). The notice stated that all but one of the companies investigated were found to have either no dumping margins or *de minimis* dumping margins.

Lawsuits were filed challenging various portions of the final determination by petitioners and respondents. Petitioners alleged that Commerce's determination was unlawful, in part, because it contained certain computational and clerical errors that affected the dumping margins for Kejriwal. Respondents contended that Commerce's affirmative determination with respect to Serampore was unlawful because of certain clerical errors and because it was based upon an erroneous calculation of foreign market value.

On November 25, 1987, April 27, 1988, and September 12, 1988, the Court remanded the final determination to Commerce for correction of these errors and for a redetermination of the dumping margins, if necessary. On March 31, 1988, July 21, 1988 and November 25, 1988, Commerce issued remand results that amended the final determination on certain iron construction castings from India. Based on its recalculation of the dumping margins, Commerce determined, in part, that Kejriwal's sales were at less than fair value during the period of investigation and that Serampore's dumping margin was *de minimis*. These remand results were eventually affirmed by the Court, in their entirety, as a result of rulings issued by it on September 12, 1988, November 22, 1988 and February 10, 1989. *Serampore Indus. v. United States Dep't of Commerce*, 12 CIT ___, 696 F. Supp. 665 (1988); *Alhambra Foundry Co. v. United States*, 12 CIT ___, 700 F. Supp. 221 (1988); *Serampore Indus. v. United States Dep't of Commerce*, 13 CIT ___, Slip Op. 89-18 (1989).

Suspension of Liquidation

In accordance with the Court's order of November 22, 1988, we are directing the Customs Service to suspend liquidation of all entries of castings from India produced by Kejriwal, which are entered, or withdrawn from warehouse, for consumption, on or after the day after the date of publication of this notice in the **Federal Register**. With respect to castings from Kejriwal, the Customs Service shall require a cash deposit equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to the redetermination exceeds the United States price. The suspension of liquidation will remain in effect until further notice.

If the Court's order of February 10, 1989, regarding Serampore is not appealed, we will publish a **Federal Register** notice directing the Customs Service to terminate the suspension of liquidation, release any bond, refund any cash deposit and proceed with the liquidation of all unliquidated entries of this merchandise produced by Serampore without regard to antidumping duties.

The weighted-average margins are as follows:

Manufacturers/sellers/exporters	Weighted-average margin percentage
RSI (*de minimis*) (excluded)	0.02
Kejriwal	2.93
Serampore	0.82
Kajaria (*de minimis*) (excluded)	0.04
All Others	2.37

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Tariff Act of 1930, as amended. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit for that amount. Accordingly, the level of certain export subsidies (as determined in the September 23, 1988, Amendment to Final Results of Administrative Review of the Countervailing Duty Order on Certain Iron-Metal Castings from India (51 FR 45788)) will be subtracted from the above dumping margins for deposit purposes only on import of those construction castings covered by the countervailing duty order.

Jan. W. Mares,

Assistant Secretary for Import Administration.

March 17, 1989.

[FR Doc. 89-6916 Filed 3-22-89; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Carbon Steel Special Sections; Request For Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products, with respect to certain carbon steel special sections.

DATE: Coments must be submitted no later than April 3, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products * * *".

We have received a short-supply request for three types of carbon steel special sections, under three inches in cross-sectional dimension, for use in the manufacture of window frames.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than April 3, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89–6819 Filed 3–22–89; 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Review on Certain Steel Strip; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products with respect to ceretain bonderized steel strip for use in manufacturing needle roller bearing shells.

DATE: Comments must be submitted on or before April 3, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product * * *."

We have received a short-supply request for two grades (MRST 443 and C15M) of special cold-rolled steel strip, bonderized on one side only, for use in deep-drawing needle roller bearing shells. Steel strip to specification MRST 443 ranges from 22.0 mm to 202.0 mm in width, 0.5 mm to 1.2 mm in thickness, and conforms to DIN specification 1624. Steel strip to specification C15M ranges from 40.5 mm to 179.0 mm in width, 0.77 mm to 1.20 mm in thickness, and conforms to DIN specification 1544.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than April 3, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89–6820 Filed 3–22–89; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments; University of California, Berkeley et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–068. *Applicant:* University of California, Berkeley, Purchasing Department, 2405 Bowditch Street, Berkeley, CA 94720. *Instrument:* Sonic Anemometer System. *Manufacturer:* Dobbie Instruments, Ltd., Australia. *Intended Use:* The instrument will be used to measure the speed and direction of the air movement in a room in studies of the relationship between the air flow patterns in a room and dispersion of the contaminants from a source in the room. *Application Received by Commissioner of Customs:* January 24, 1989.

Docket Number: 89–069. *Applicant:* University of Texas Medical School at Houston, 6431 Fannin Street, Room 4258, Houston, TX 77030. *Instrument:* High Precision Digital Scanning Device. *Manufacturer:* Institute for Biomedical Technology, Switzerland. *Intended Use:* The instrument will be used for quantitative analysis of coronary arteriograms in order to determine the severity of coronary atherosclerosis from x-ray films. *Application Received by Commissioner of Customs:* January 24, 1989.

Docket Number: 89–070. *Applicant:* City College of New York, Convent Avenue at 138th Street, New York, NY 10031. *Instrument:* Fourier Transform Raman Spectrometer System, Model DA3. *Manufacturer:* Bomem, Inc.,

Canada. *Intended Use:* The instrument will be used to study surface structure and dynamical properties of dyes that are used to spectrally sensitize semiconductor metals. The studies will be conducted in order to understand sensitization at the molecular level with the idea that with fundamental information it would be possible to establish conditions for improving the sensitization properties of dyes in spectrally sensitizing photographic film, solar cells, xerographic copiers, etc. *Application Received by Commissioner of Customs:* January 24, 1989.

Docket Number: 89–071. *Applicant:* Arkansas Children's Hospital, 800 Marshall Street, Little Rock, AR 72202. *Instrument:* Electron Microscope, Model EM 902 PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used for the following research:

(1) Examination of the alteration in lung and heart development, and pulmonary hypertension which is a result of continuous exposure of newborn rats to hypoxia.

(2) Studies of how mechanical forces alter osteogenesis.

(3) Correlation of the parenchymal distribution of Fluorine labeled drugs as identified by Magnetic Resonance Imaging and the ultrastructural distribution of these clinically used drugs.

(4) Study of cell block preparations of macrophages or mononuclear phagocytes following in vivo or in vitro stimulation with situations such as acute lung injury, acute respiratory distress syndrome, pneumonia, animal models of hypoxia and the immunotoxicity of inhalable nitrites.

(5) Development, progression, and possible treatment of nephropathy in Type I diabetes mellitus.

Application Received by Commissioner of Customs: January 25, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–6818 Filed 3–22–89; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; University of Nevada et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket Number: 87–246. *Applicant:* University of Nevada, Reno, NV 89557–0047. *Instrument:* Air Compressor and Air Motor Test Unit. *Manufacturer:* G. Cussons Ltd., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* June 7, 1988.

Docket Number: 88–010. *Applicant:* University of California, San Francisco, CA 94143. *Instrument:* Spectropolarimeter, Model J–500A. *Manufacturer:* Jasco, Inc., Japan. *Date of Denial Without Prejudice to Resubmission:* May 23, 1988.

Docket Number: 88–022. *Applicant:* California State University-Fresno, Fresno, CA 93740. *Instrument:* Circular Dichroism Spectropolarimeter. *Manufacturer:* Jasco, Inc., Japan. *Date of Denial Without Prejudice to Resubmission:* May 23, 1988.

Docket Number: 88–032. *Applicant:* Virginia Commonwealth University, Medical College of Virginia, Richmond, VA 23298–0001. *Instrument:* Rapid Kinetics Accessory, Model SFA–11. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Date of Denial Without Prejudice to Resubmission:* June 20, 1988.

Docket Number: 88–041. *Applicant:* University of Arizona, Tucson, AZ 85721. *Instrument:* Stopped-Flow Sample Handling Unit, Model SF–51. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Date of Denial Without Prejudice to Resubmission:* June 20, 1988.

Docket Number: 88–050. *Applicant:* State University of New York at Buffalo, Buffalo, NY 14214. *Instrument:* Spectropolarimeter, Model J–600C. *Manufacturer:* Jasco, Inc., Japan. *Date of Denial Without Prejudice to Resubmission:* May 23, 1988.

Docket Number: 88–067. *Applicant:* Boston University, Boston, MA 02215. *Instrument:* GC/Mass Spectrometer/DS, Model MAT 90. *Manufacturer:* Finnigan Corporation, West Germany. *Date of Denial Without Prejudice to Resubmission:* May 12, 1988.

Docket Number: 88–095. *Applicant:* University of Chicago, Chicago, IL 60637. *Instrument:* Laser System. *Manufacturer:* Lumonics, Canada. *Date of Denial Without Prejudice to Resubmission:* May 23, 1988.

Docket Number: 88–107. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Rapid Kinetics Accessory, Model SFA–11. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* August 24, 1988.

Docket Number: 88–114. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Seismometers. *Manufacturer:* G. Streckeisen, Switzerland. *Date of Denial Without Prejudice to Resubmission:* August 24, 1988.

Docket Number: 88–127. *Applicant:* University of Nevada, Reno, Reno, NV 89557–0047. *Instrument:* Air Motor Test Unit. *Manufacturer:* G. Cussons Ltd., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* June 28, 1988.

Docket Number: 88–155. *Applicant:* University of Arizona, Tucson, AZ 85721. *Instrument:* Scanning Electron Microscope, Model Stereoscan 120B. *Manufacturer:* Cambridge Instruments, United Kingdom. *Date of Denial Without Prejudice to Resubmission:* August 3, 1988.

Docket Number: 88–160. *Applicant:* University of New Orleans, Lakefront, New Orleans, LA 70148. *Instrument:* Excimer Laser with Mechanical Pump, Model EX–510. *Manufacturer:* Lumonics, Inc., Canada. *Date of Denial Without Prejudice to Resubmission:* July 15, 1988.

Docket Number: 88–175. *Applicant:* Rutgers University, Newark, NJ 07102. *Instrument:* Rapid Kinetics Accessory, Model SFA–11. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* August 24, 1988.

Docket Number: 88–187. University of California, Lawrence Livermore Laboratory, Livermore, CA 94550. *Instrument:* NMR Spectrometer, Model MSL. *Manufacturer:* Bruker Analytik GmbH, West Germany. *Date of Denial Without Prejudice to Resubmission:* August 10, 1988.

Frank W. Creel,

Director, Statutory Import Programs.

[FR Doc. 89–6821 Filed 3–22–89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Wisconsin-Madison et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub.

L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 87–182R2. *Applicant:* University of Wisconsin-Madison, Department of Biochemistry, 420 Henry Hall, Madison, WI 53706. *Instrument:* NMR Spectrometer, Model AM 500 and NMR Spectrometer Data Station. *Manufacturer:* Bruker Instruments, Switzerland. Notice of this resubmitted application was published in the **Federal Register** of July 14, 1988.

Docket Number: 88–131R. *Applicant:* University of New Mexico, Department of Physics and Astronomy, 800 Yale NE, Albuquerque, NM 87131. *Instrument:* Copper Vapor Laser, Model CU40. *Manufacturer:* Oxford Laser, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of April 27, 1988.

Docket Number: 89–062. *Applicant:* Trustees of University of Pennsylvania, Purchasing Department, 3451 Walnut Street, Philadelphia, PA 19104. *Instrument:* Surface Forces Apparatus, Mark 2 PI. *Manufacturer:* Anutech Pty. Ltd., Australia. *Intended Use:* The instrument will be used for fundamental measurements of molecular forces in solid/gas and solid/liquid systems of various kinds. In addition, the instrument will be used to train graduate students. *Application Received by Commissioner of Customs:* January 18, 1989.

Docket Number: 89–064. *Applicant:* U.S. Department of Commerce/NOAA, Fluid Modeling Branch, Meteorology Division, MD–81, G–Slam Building, Page Road and I–40, Research Triangle Park, NC 27711. *Instrument:* Pulsed Wire Anemometer and Probe Support Unit. *Manufacturer:* Pela Flow Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used to supplement measurements of the highly turbulent or separated flow in model valleys. The experiments will include investigations of the structure of wakes downstream of model buildings and model hills to obtain a better understanding of the processes by which pollutants are dispersed in a highly turbulent flow field. The results will be applied in developing theoretical models for the prediction of adverse levels of air pollution. *Application Received by Commissioner of Customs:* January 26, 1989.

Docket Number: 89–066. *Applicant:* Ames Laboratory—U.S. Department of Energy, Iowa State University, 132 Spedding Hall, Ames, Iowa 50011–3020. *Instrument:* Electron Microscope, Model CM30T. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used to examine high temperature, rare-earth-oxide superconducting materials made by a variety of processes, in-situ Cu-based composites, the graphite morphology in cast irons, rapidly solidified powders, Mg-La eutectic alloys and Al-Li alloys. Experiments will consist of tilting experiments to determine crystallographic structure and orientations, chemical analysis to determine composition, and imaging experiments to determine defect structures. All of the investigations will be concentered around understanding the microstructures of the material in order to determine how the properties/performance can be improved through manipulation of both alloy composition and relevant processing parameters. In addition, the instrument will be used for educational purposes in various Materials Science and Engineering courses. *Application Received by Commissioner of Customs:* January 23, 1989.

Docket Number: 89–072. *Applicant:* Yale University School of Medicine, Department of Cell Biology, 333 Cedar Street, P.O. Box 3333, New Haven, CT 06510–8002. *Instrument:* Free Flow Electrophoresis with Optical Scanner, Model Elphor Vap 22. *Manufacturer:* Bender & Hobein, West Germany. *Intended Use:* The instrument will be used for the isolation of cells, subcellular organelles, and proteins based on their characteristic electrophoretic properties. All materials will be of mammalian or yeast origin. Experiments will be conducted to facilitate the study of fundamental questions of cell structure, the organization of cell membranes, and the functions of intracellular organelles, especially as these questions relate to understanding cancer and various other inherited and non-inherited pathological states. *Application Received by Commissioner of Customs:* January 26, 1989.

Docket Number: 89–073. *Applicant:* City College of New York, Convent Avenue at 138th Street, New York, NY 10031. *Instrument:* Ion Source, Model, CORDISS. *Manufacturer:* Institut de Physique Experimentale, Switzerland. *Intended Use:* The instrument will be used to study the structure and dynamical properties of mass-selected, matrix isolated metal cluster species with the ultimate purpose of understanding the structure and bonding of these species and to apply this information to problems pertinent to catalysis, micro-electronics film formation, etc. *Application Received by Commissioner of Customs:* January 27, 1989.

Docket Number: 89–074. *Applicant:* Michigan State University, Department of Physics and Astronomy, East Lansing, MI 48824. *Instrument:* Dilution Refrigerator, Model 200 TLM. *Manufacturer:* Oxford Instruments, United Kingdom. *Intended Use:* The instrument will be used for the study of several problems in condensed-matter physics. Most important of these are the nature of the defects that give rise to electrical resistance noise and the sensitivity of the conductance measurement in mesoscopic samples to investigate other problems in condensed-matter physics. An integral part of the research activities is the training of graduate students in Physics and Astronomy. *Application Received by Commissioner of Customs:* February 1, 1989.

Docket Number: 89–075. *Applicant:* Vanderbilt University School of Medicine, Department of Chemistry, Nashville, TN 37230–0146. *Instrument:* Rapid Kinetics Instrument, Model QFM–5. *Manufacturer:* Bio-Logic, France. *Intended Use:* The instrument will be used for research purposes in the following projects: "Function and Biology of Eukaryotic DNA Topoisomerases" and "Effect of EGF of Topoisomerase Activity in Eukaryotic Cells" with the ultimate goals of (1) determining the catalytic mechanism of eukaryotic topoisomerase II, (2) describing the role of phosphorylation in the *in vivo* and *in vitro* regulation of the enzyme (topoisomerase II exists as a phosphoprotein *in vivo* and serine phosphorylation stimulates its activity 3-fold *in vitro*), and (3) delineation of the interactions between topoisomerase II and antineoplastic agents. Other projects include "Peptide Receptors in Biological Membranes" and "Mechanism of Action of Epidermal Growth Factor" with the aim of elucidating different aspects of the structure and dynamics of the EGF receptor, and the long range goal of understanding in detail how the binding of EGF is transduced into a cytoplasmic signal that leads to mitosis. *Application*

Received by Commissioner of Customs: January 30, 1989.

Docket Number: 89–076. *Applicant:* Veterans Administration Medical Center, 4801 Linwood Boulevard, Kansas City, MO 64128. *Instrument:* Stopped Flow Spectrophotometer, Model SF–51. *Manufacturer:* Hi-Tech, United Kingdom. *Intended Use:* The instrument will be used for studies of a group of enzymes of typical pyridine-nucleotide linked dehydrogenases specifically focused on L-glutamate dehydrogenase from bovine liver and from Clostridium symbosium. Typical enzyme properties will include thermostability, substrate specificity, pH dependence, and allosteric effects. *Application Received by Commissioner of Customs:* February 3, 1989.

Docket Number: 89–077. *Applicant:* National Institutes of Health, Division of Contracts and Grants, Building 31/1B44, Bethesda, MD 20892. *Instrument:* Positron Emission Tomography Scanner, Model PC2048–15B. *Manufacturer:* Scanditronix AB, Sweden. *Intended Use:* The instrument will be used to study brain function in normal and diseased states, under a variety of conditions. The disease conditions to be studied include brain tumors, epilepsy, Alzheimer's disease, Huntington's chorea, Parkinson's disease, AIDS, schizophrenia, and Down's Syndrome. The properties of brain function to be studied include regional cell metabolism and blood flow, the change of these measures of function to various external stimuli (e.g., visual or mental tasks, tactual stimulation, treatment with a drug, radiation therapy, or surgery), the difference in these functional distributions between normal, and abnormal conditions, the uptake and kinetics of new chemicals for potential use in diagnosis and treatment of disease, and the physiology and biochemistry of various brain disorders. *Application Received by Commissioner of Customs:* February 6, 1989.

Docket Number: 89–078. *Applicant:* Boston University, 590 Commonwealth Avenue, Boston, MA 02215. *Instrument:* Electron Microscope, Model CM12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used to study the structure of various semiconductors such as silicon, gallium arsenide, indium phosphide, and combinations of these, and also the new High Tc Superconductors in thin film form. The studies will be conducted to further enhance the knowledge of the properties of the materials and to provide an understanding of the fundamental physics governing the behavior of systems such as the High Tc Superconductors. *Application Received by Commissioner of Customs:* February 9, 1989.

Docket Number: 89–079. *Applicant:* Veterans Administration Medical Center, 508 Fulton Street, Durham, NC 27705. *Instrument:* Electron Microscope, Model JEM–1200 EX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for the following research projects:

(1) Developing techniques for imaging neurotransmitter receptors at the ultrastructural level using ligand binding techniques.

(2) Use of electron microscopy to describe the alterations that occur in the retina of diabetic cats and to determine the site of breakdown of the blood-retinal barrier.

(3) Determination of the safety of drugs that are potential inhibitors of abnormal cellular proliferation in the eye.

(4) Study of asbestos content of lung tissue and lavage fluid in rats exposed for one hour to well characterized aerosols of chrysotile or crocidolite asbestos, or both.

(5) Investigations of structural and microchemical changes that occur in live skeletal muscle fibers at any specific time during excitation-contraction-coupling (ECC), in an attempt to elucidate the mechanism of ECC.

(6) Qualitatively and quantitatively assess growth and repair processes in the lung.

(7) Assessment of the degree of structural recovery of the retina after the macula is surgically relocated and following experimental serous and hemorrhagic retinal detachment.

(8) Description of the alveolar epithelial cells of rat lungs in the study of pharmacologic manipulations of the surfactant system.

Application Received by Commissioner of Customs: February 9, 1989.

Docket Number: 89–080. *Applicant:* Pennsylvania State University, Agronomy Department, 405 Agricultural Administration Building, University Park, PA 16802. *Instrument:* Nitrachek Reflectometer. *Manufacturer:* Medistron, United Kingdom. *Intended Use:* The instrument will be used for measuring the nitrate concentration of agricultural soils in Pennsylvania. *Application Received by Commissioner of Customs:* February 10, 1989.

Docket Number: 89–081. *Applicant:* University of Mississippi Medical Center, Department of Pathology, 2500 North State Street, Jackson, MS 39216. *Instrument:* Electron Microscope, Model EM 109T. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used for the following research studies:

(1) Effect of myocardial stretch as the inducer of myocardial hypertrophy.

(2) Effects of altered electrolyte metabolism on myocardium.

(3) Chlordecone-induced potentiation of carbon tetrachloride hepatotoxicity.

Application Received by Commissioner of Customs: February 10, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–6817 Filed 3–22–89; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Frandon Enterprises, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Frandon Enterprises, Inc., having a place of business in Seattle, Washington, an exclusive license in the United States and certain foreign countries to practice the invention entitled "Quick Color Test to Detect Lead Release from Glazed Ceramic and Enameled Metal Ware," U.S. Patent Application Serial Number 7–264,041. The invention consists of a color test method to quickly identify glazed ceramic and/or enameled metal were which releases amounts of lead that are hazardous to humans. Prior to the grant of any license by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing

to the Order Department, NTIS 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-6840 Filed 3-22-89; 8:45 am]

BILLING CODE 3510-04-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information; Survey of Manufacturers and Importers of Toys

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a survey of manufacturers and importers of toys. The requested expiration date is September 30, 1989.

The purpose of the survey is to determine the level of compliance with regulations banning toys and articles intended for children under three years of age which present choking, aspiration, or ingestion hazards because of small parts. These regulations are codified at 16 CFR 1500.18(a)(9) and Part 1501. The regulations prescribe tests to determine if a toy presents a choking, aspiration, or ingestion hazard because the toy itself, or any part which could be detached or broken off during normal or reasonably foreseeable use, is too small.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Survey of Compliance with the Small Parts Requirement, 16 CFR Part 1501.

Type of request: Approval of a new plan.

Frequency of collection: One time.

General description of respondents: Manufacturers and importers of toys.

Total number of respondents: 125.

Hours per response: 6.

Total hours for all respondents: 750.

Comments: Comments about this request for approval of a collection of information should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: March 17, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89-6813 Filed 3-22-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Service; Meetings

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS).

ACTION: Notice of conference.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming conference of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the DACOWITS is to assist the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATE: April 16-20, 1989 (Detailed agenda follows).

ADDRESS: Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia, unless otherwise noted in detailed agenda.

Agenda: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following:

Sunday, April 16, 1989

7:00 a.m.-8:30 a.m.—No host working breakfast in honor of Class of 1989 (Current DACOWITS members only)
8:00 a.m.-12:00 noon—Registration: Radisson Mark Plaza Hotel, Alexandria, Virginia
9:00 a.m.-9:30 a.m.—OSD Overview
9:45 a.m.-10:00 a.m.—View CBS-TV Program "60 Minutes": Women in Combat segment
10:15 a.m.-10:45 a.m.—Service Orientation Briefing—Army (New Members, MilReps); Service Orientation Briefing—Army (2nd & 3rd year Members, MilReps)
10:45 a.m.-11:15 a.m.—Service Orientation Briefing—Navy (New Members, MilReps); Service Orientation Briefing—Navy (2nd & 3rd year Members, MilReps)
11:30 a.m.-12:50 p.m.—Get Acquainted Luncheon (Current DACOWITS members, MilReps, Legal Advisors, and Liaison Officers only)
1:00 p.m.-1:30 p.m.—Service Orientation Briefing—Marine Corps (New Members, MilReps); Service Orientation Briefing—Marine Corps (2nd & 3rd year Members, MilReps)
1:30 p.m.-2:00 p.m.—Service Orientation Briefing—Air Force (New Members, MilReps); Service Orientation Briefing—Air Force (2nd & 3rd year Members, MilReps)
2:15 p.m.-2:45 p.m.—Service Orientation Briefing—Coast Guard (New Members, MilReps); Service Orientation Briefing—Coast Guard (2nd & 3rd year Members, MilReps)
2:45 p.m.-3:15 p.m.—Briefing—Youth Attiude Tracking Study
3:30 p.m.-4:00 p.m.—Briefing—Army Field Artillery
4:00 p.m.-6:00 p.m.—Subcommittee Sessions (Evaluate Service Responses); Subcommittee #2 Briefings:—Army Incentives to Enlist and Re-enlist—Reserve Component Attrition
6:30 p.m.-7:30 p.m.—Social (cocktails and hors d'oeuvres)

Monday, April 17, 1989

9:30 a.m.-10:00 a.m.—Official Opening
10:00 a.m.-10:30 a.m.—Tour of Military Women's Corridor
11:15 a.m.-12:45 p.m.—OSD Luncheon (By Invitation Only)
1:00 p.m.-3:30 p.m.—Briefings: Medical Care
3:45 p.m.-4:30 p.m.—Briefings: Marine Corps Restructuring/Marine Corps Enlisted Career Force Controls
4:30 p.m.-4:40 p.m.—Briefing: Marine Corps Security Guard Battalions
4:40 p.m.-5:30 p.m.—Briefing: Marine Corps Security Forces
7:00 p.m.-10:00 p.m.—OSD Reception and Dinner (By Invitation Only)

Tuesday, April 18, 1989

7:30 a.m.-1:15 p.m.—Field trip hosted by the U.S. Coast Guard: cruise aboard U.S. Coast Guard cutter
1:30 p.m.-5:00 p.m.—Subcommittee Sessions

Wednesday, April 19, 1989

8:00 a.m.-9:00 a.m.—No host working breakfast (Current DACOWITS members only)
9:00 a.m.-9:30 a.m.—Presentations by Members of the Public
9:45 a.m.-11:45 a.m.—Subcommittee Sessions

12:00 a.m.–2:00 p.m.—Installation Visit Luncheon
2:00 p.m.–5:00 p.m.—Executive Committee Mark-up

Thursday, April 20, 1989

7:00 a.m.–8:00 a.m.—No host working breakfast (Current DACOWITS members only)
7:30 a.m.–8:00 a.m.—Individual review of resolutions
8:00 a.m.–10:00 a.m.—General Business Session *Adjourn*

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Managements and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference.

(1) Members of the public will not be permitted to attend official Department of Defense luncheon or reception and dinner.

(2) All business sessions, to include the Executive Committee Meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than March 27, 1989.

(5) Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

(6) Oral presentation by members of the public will be permitted only from 9:00 a.m. to 9:30 a.m. on Wednesday, April 19 before the full Committee.

(7) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS office with a copy of the presentation by April 3 and make available 100 copies of the statement at the conference site.

(8) Persons submitting a written statement only for inclusion in the minutes of the conference must submit 1 copy either before or during the conference or within 5 days after the close of the conference.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Director, DACOWITS and Military Women Matters, to consider.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee meetings, or the Business Session on Thursday, April 20.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 20, 1989.

[FR Doc. 89–6930 Filed 3–22–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 25 May 1989.

Time: 0800–1600.

Place: Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: Hepatitis A vaccine development, Group B Meningitis vaccine trials, Klebsiella pseudomonas vaccine and hyperimmune sera, service AIDS update, Army status of polio vaccinations, and typhoid fever vaccines.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258, (703) 756–8012/3.

Dated: March 6, 1989.

Robert A. Wells,

COL., USA, MSC, Executive Secretary.

[FR Doc. 89–6843 Filed 3–22–89; 8:45 am]

BILLING CODE 3710–08–M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 26 May 1989.

Time: 0830–1530.

Place: Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: Military preventive medicine officer reports, followup evaluations on armor casualty predictions and worldwide disease alerts, automated data on ambulatory care, computer driven malaria prediction model, field water quality and recycling, and training injury overview. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258, (703) 756–8012/3.

Dated: March 6, 1989.

Robert A. Wells,

Col., USA, MSC, Executive Secretary.

[FR Doc. 89–6844 Filed 3–22–89; 8:45 am]

BILLING CODE 3710–08–M

Army Advisory Panel on ROTC Affairs; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Panel meeting:

Name of Panel: Army Advisory Panel on ROTC Affairs.

Date of Meeting: June 21–22, 1989.

Place: Fort Bragg, North Carolina.

Time: 9 a.m.–5 p.m., June 21, 1989. 9 a.m.–5 p.m., June 22, 1989.

Proposed Agenda: The meeting will consist of briefings and discussions. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time, and in the manner, permitted by the Panel. It is projected that the following events will take place during the meeting. After opening remarks by Major General Robert E. Wagner and the chairman of the Panel, Dr. Anthony F. Ceddia, any administrative matters requiring attention will be resolved. The meeting will then proceed with a variety of recent ROTC Cadet Command

initiatives. Major General Wagner will provide an overview of the significant changes since the October 1988 meeting at Norwich university. Briefings on June 21–22 will include: Scholarship Update, Advertising Strategy, Precommissioning Literacy Standards, Marketing Operation Citizen Soldier, Spring Gold, Green to Gold Update, Camps Update, Cadet Professional Development Training, and the High School Program Update. On June 22, the Army Advisory Panel on ROTC Affairs will meet in general session to formulate recommendations, consider progress made on previous Panel recommendations, and to select a date for the next Panel meeting.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 89–6842 Filed 3–22–89; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Napa River Flood Control Project, Napa County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action is Preconstruction Engineering and Design (PED) of flood control measures in Napa City and Napa County, California. The purpose of the action is to reduce potential flood damages caused by high flows during major storm events. The proposed project will provide a 100-year level of flood protection for the City of Napa and adjacent areas. A General Design Memorandum (GDM) and Environmental Impact Statement (EIS) were prepared for the project in 1975. By referendum election in 1976 and 1977, a majority of voters in the community opposed the project, and the project was inactivated in 1977. After severe flooding in February 1986 and at the request of the Napa County Board of Supervisors, the project was reactivated. A Supplemental GDM and Supplemental EIS will be prepared for this project.

Scoping and Further Information Contact: Suggestions on the scope of coverage for environmental impact evaluations and related information should be provided in writing to the District Engineer, U.S. Army Corps of Engineers, Sacramento District, 650 Capitol Mall, Sacramento, California 95814–4794. Questions may be addressed to Mr. Mike Welsh, at telephone (916) 551–1861.

SUPPLEMENTARY INFORMATION: 1. *Proposed Action.* The purpose of PED is to refine the design and scope of the recommended plan to one that the local sponsor can fully support and to bring the project to a construction start. The National Economic Development (NED) plan will be identified. The NED plan would include appropriate mitigation for identified environmental impacts. Potential environmental impacts of the project include loss of riparian vegetation, and wetland habitat for two endangered species, the salt marsh harvest mouse and the California clapper rail.

2. Alternatives analyzed in the 1975 GDM and EIS will be reviewed and modified as needed. The alternatives included are: (a) Construction of upstream reservoirs, (b) channel improvements, (c) levees along the existing channel, including both top of bank and setback levees, (d) floodwalls, (e) bypass channels, and (f) no action. The selected plan is expected to consist of a combination of some of these alternatives.

3. *Scoping Process.* a. Close coordination will be maintained with Federal, State, local agencies, environmental organizations, concerned citizens, and other interested groups. This will be accomplished through public meetings, and interagency coordination. In addition, a Task Force composed of concerned agencies and public interest groups may be established to obtain information on controversial issues. A scoping meeting is tentatively scheduled during April 1989. Through this Notice of Intent all segments of the affected public and agencies are invited to participate.

b. Significant issues that will be discussed in depth in the SEIS will include: impacts to fish and wildlife resources, impacts to riparian, wetland, and upland vegetation cultural resources, water quality, recreation, endangered species, land use, socioeconomics, esthetic impacts and cumulative impacts.

c. The Napa County Flood Control and Water Conservation District (NCFCWCD) is the local sponsor for the project. The sponsor will participate with the Corps of Engineers in PED.

d. Significant review and consultation requirements to be conducted during the preparation of the DSEIS include coordination with the U.S. Fish and Wildlife Service under the Fish and Wildlife Coordination Act and Endangered Species Act, consultation with the State Historic Preservation Officer and Advisory Council on Historical Preservation under the National Historic Preservation Act, and coordination with the California Water Quality Control Board and Environmental Protection Agency on water quality issues under section 404 of the Clean Water Act.

4. *Availability.* The DSEIS is scheduled to be available for public review and comment in mid-1991.

March 3, 1989.

Jack A. LeCuyer,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89–6845 Filed 3–22–89; 8:45 am]

BILLING CODE 3710–GH–M

Environmental Advisory Board; Meeting

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is open to the public.

DATE: The meeting will be held from 8:00 a.m., Wednesday, April 12, 1989, to 10:30 a.m. Friday, April 14, 1989.

ADDRESS: The meeting will be held at the Dallas/Fort Worth Hyatt Regency, P.O. Box 619014, International Parkway, DFW Airport, Texas 75261–9014.

FOR FURTHER INFORMATION CONTACT: Dr. William L. Klesch, Chief, Office of Environmental Policy, Office of the Chief of Engineers, Washington, DC 20314–1000, (202) 272–0166.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the 45th Meeting of the EAB, "Corps Civil Works Mitigation Policies and Practices", is:

Wednesday, 12 April 1989

0800–0900 Chief's Charge to EAB—LTG Hatch
0900–0915 Welcome—Host Division/District
0915–0945 Old and New Business (Location and topic of next Meeting)—Dr. Klesch
0945–1030 EAB Reply and Comment—Mr. Guess
1030–1050 Break
1050–1120 Legal Basis for Mitigation: Overview—Mr. Wood
1120–1130 EAB Questions and Answers—EAB

1130–1300 Lunch

Regulatory Mitigation

1300–1320 Corps Perspective: Overview of Policies and Practices—Mr. Steever
1320–1330 EAB Questions and Answers—EAB
1330–1350 EPA Perspective on Mitigation—Ms. Hamner
1350–1400 EAB Question and Answers—EAB
1400–1420 Private Sector Perspective on Mitigation—Mr. Yost
1420–1510 Break
1510–1610 Corps R&D Support for Mitigation Planning and Implementation—Mr. Theriot
1610–1630 EAB Questions and Answers—EAB
1630–1700 Public Comment and Adjourn for Day—Mr. Guess

Thursday, 13 April 1989

Federal Projects Mitigation: Fish and Wildlife Resources

0800–0820 Corps Perspective: Overview of Policies and Practices—Mr. Pierce
0820–0830 EAB Questions and Answers—EAB
0830–0850 USFWS Perspective on Mitigation—Mr. Morganwick
0850–0900 EAB Questions and Answers—EAB
0900–0920 State Perspective on Mitigation—Dr. McKinney
0920–0930 EAB Questions and Answers—EAB
0930–0950 Break
0950–1010 Local sponsor Perspective on Mitigation—Mr. Mansell
1010–1020 EAB Questions and Answers—EAB
1020–1040 Conservation Organization Perspective on Mitigation—Dr. Rosen
1040–1130 EAB Questions and Answers—EAB
1130–1300 Lunch

Federal Project Mitigation: Cultural Resources

1300–1320 Corps Perspective: Overview of Policies and Practices—Mr. Banks
1320–1330 EAB Questions and Answers—EAB
1330–1350 ACHP Perspective of Mitigation—Mr. Fowler
1350–1400 EAB Questions and Answers—EAB
1400–1410 Break
1410–1430 SHPO Perspective of Mitigation—Dr. Tunnell
1430–1440 EAB Questions and Answers—EAB
1440–1500 Non-Federal Project Sponsor Perspective of Mitigation—Mr. Oliver
1500–1530 EAB Questions and Answers—EAB
1530–1540 Break
1540–1620 Panel Discussion: "Need for a Common Federal Mitigation Policy"—Dr. Rosen/NMFS Banks/Fowler
1620–1640 EAB Question and Answers—EAB
1640–1700 Public Comments and Adjourn for Day—Mr. Guess

Friday, 14 April 1989

0800–0900 Report of EAB to Chief of Engineers—Mr. Guess
0900–0920 Break
0920–1000 Response of the Chief—BG Kelly
1000–1030 Comments from Public—Mr. Guess
1030 Adjourn

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 89–6846 Filed 3–22–89; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974; Cancellation of Record System

AGENCY: Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Notice of cancellation of four DLA systems of records.

SUMMARY: The Defense Logistics Agency of the Department of Defense is terminating four existing systems of records subject to the Privacy Act of 1974. These notices were identified, during a required annual review of the agency's Record System Notices, as no longer being needed by the agency and are hereby cancelled.

DATE: This action will be effective, without further notice, March 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, DLA–XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, Telephone: 202–274–6234, Autovon: 284–6234.

SUPPLEMENTARY INFORMATION: This action removes four record system notices from the DLA inventory which are no longer required by the agency. The complete Defense Logistics Agency inventory of systems of records, as prescribed by the Privacy Act of 1974 (5 U.S.C. § 552a), has been published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
50 FR 61898, December 20, 1985
51 FR 27443, July 31, 1986
51 FR 30104, August 22, 1986
52 FR 35304, September 18, 1987
52 FR 37495, October 7, 1987
53 FR 04442, February 16, 1988
53 FR 09965, March 28, 1988
53 FR 21511, June 8, 1988
53 FR 26105, July 11, 1988
53 FR 32091, August 23, 1988
53 FR 39129, October 5, 1988
53 FR 44937, November 7, 1988
53 FR 48708, December 2, 1988

This deletion action of the affected record system notices is not within the purview of subsection (r) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of a new or altered system report to OMB and congressional committees.

Dated: March 20, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

The following four Defense Logistics Agency systems of records subject to the Privacy Act of 1974 are no longer needed and are hereby terminated and deleted from the agency's inventory of record system notices.

System identification	Title	FEDERAL REGISTER citation
1. S214.20DLA–L	Emergency Assignment and Training Records	50 FR 22909, May 29, 1985.
2. S355.02DCIDO	DLA Intern Records	50 FR 22930, May 29, 1985.
3. S380.20DLA–K	Civilian Medical Case Files	50 FR 22933, May 29, 1985.
4. S850.10DLA–Q 2	Monthly Quality Assurance Activity Report by Person	50 FR 22940, May 29, 1985.

[FR Doc. 89–6933 Filed 3–22–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.221]

Native Hawaiian Special Education Program; Invitation for Applications for New Awards for Fiscal Year 1989

Purpose of Program: The State of Hawaii and Native Hawaiian organizations are eligible to apply for grants to operate projects that address the special education needs of Native Hawaiian students. This program is authorized by section 4007 of Pub. L. 100–297 (April 28, 1988).

Deadline for Transmittal of Applications: May 26, 1989.

Deadline for Intergovernmental Review: July 25, 1989.

Applications Available: April 3, 1989.

Available Funds: $494,000.

Project Period: Up to 18 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, and 85.

Weighting for Selection Criteria: The Education Department General Administrative Regulations at 34 CFR 75.210(c) authorizes the Secretary to distribute an additional 15 points among the selection criteria in 34 CFR 75.210 to bring the total possible points to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of Operation: (§ 75.210(b)(3)). Ten (10) additional points will be added for a possible total of 25 points for this criterion.

Quality of Key Personnel: (§ 75.210(b)(4)). Three (3) additional points will be added for a possible total of 10 points for this criterion.

Adequacy of Resources: (§ 75.210(b)(7)). Two (2) additional points will be added for a possible total of 5 points for this criterion.

For Applications or Further Information Contact: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3522) Washington, DC 20202.

Telephone: Linda Glidewell (202) 732–1099.

Authority: 20 U.S.C. 4907 and 4908.

Dated: March 20, 1989.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–6938 Filed 3–22–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain/Wetlands Involvement Notification for the Clean Coal Technology Project Proposed at Edwards Station, Unit No. 1, Near Bartonville, Illinois

AGENCY: Department of Energy, DOE.

ACTION: Notice of floodplain/wetlands involvement.

SUMMARY: Under the Clean Coal Technology Program, DOE proposes to fund, in part, a project entitled "Enhancing the Use of Eastern and Midwestern Coals by Gas Reburning-Sorbent Injection (GR–SI) at the Central Illinois Light Company, Edwards Station, Unit No. 1." Pursuant to 10 CFR Part 1022 (DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements"), DOE has determined that this action would involve activities within a floodplain/wetland and, therefore, the following notice is submitted for public review and comment.

In accordance with DOE regulations for compliance with floodplain/wetland environmental review requirements (10 CFR Part 1022), DOE will prepare a floodplain/wetland assessment for this site. The floodplain/wetland assessment will be incorporated into the environmental assessment to be prepared for this action. Maps and further information are available from DOE at the address shown below.

DATE: Any comments are due on or before April 7, 1989.

ADDRESS: Address comments to the Pittsburgh Energy Technology Center, Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236. All comments should refer to the project title.

FOR FURTHER INFORMATION CONTACT: Dr. Earl Evans, Environmental Project Manager, Pittsburgh Energy Technology Center, Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236, (412) 892–5709.

SUPPLEMENTARY INFORMATION: The proposed demonstration project will be performed at the Central Illinois Light Company's (CILCO) Edwards Station, Unit No. 1. Edwards Station occupies a 173-acre facility located along the west bank of the Illinois River in Peoria County, approximately 2.5 miles south of Bartonville, Illinois, and about 130 miles southwest of Chicago. While a flood zone map of Edwards Station area from the Federal Emergency Management Agency shows that the major portion of the plant (boiler building, electrical distribution facilities, and ash pond) is not considered part of the 100-year floodplain, the existing coal storage area lies within the 100-year floodplain of the Illinois River. The proposed work will be done behind the Illinois River levee and is, therefore, not expected to impede flood flows or impact storage of floodwaters.

Edwards Station includes three coal-fired steam electric generating units with a total net capacity of 740 megawatts (MWe). Unit No. 1, site of the proposed project, is a 117 MWe front wall-fired boiler that began electrical production in 1960. The three units at Edwards Station currently fire a blend of high sulfur Illinois and low sulfur Kentucky coals.

Demonstration of GR–SI technology at Edwards Station will involve some construction at the plant site not in the floodplain, and installation of a natural gas pipeline extension to Edwards Station from a existing gas transmission line approximately one mile northwest of the plant. A portion of the gas pipeline construction activities will occur within the 100-year floodplain and within a palustrine forested broadleaf deciduous seasonal wetland on land owned by CILCO.

No change in the coal storage area nor effect on floodplain/wetlands values will occur during the operational phase of the proposed project. The only construction phase activity that could affect floodplain/wetlands values is installation of a portion of a 12-inch natural gas pipeline within the floodplain/wetland. This pipeline is an extension of an existing CILCO 24-inch gas supply line. Design and installation of the pipeline will be handled by the CILCO Gas Division. Standard CILCO design and installation practices (underground pipeline, sufficient cover above the pipeline, and removal of excavated material from the construction site) have been reviewed by the U.S. Army Corps of Engineers (COE) and are sufficient to satisfy COE requirements for construction within the floodplain and welands. The temporary disturbance from construction of the pipeline will be short-term in nature. After pipeline installation, the affected land will again become available for its preconstruction uses.

Signed in Washington, DC, this 17th day of March, 1989, for the United States Department of Energy.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89–6926 Filed 3–22–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award Grant to Applied Physics Technology, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE–FG01–89CE15444 to fund the development of an invention by Dr. Claude V. Swanson, President of Applied Physics Technology, Inc. (APT) entitled "An Apparatus and Method for Using Microwave Radiation to Measure Water Content of a Fluid."

Scope

This grant will be used to implement the patent design using a chirped microwave signal ranging from 1 to 26 GH_2 in a half-scale laboratory bench model. Software will be developed to control the sweep rate of the microwave signal and calculate the oil and water content of text samples. The invention proposes instrumentation and measurement techniques for determining to a very high degree of accuracy the water, gas and oil content of petroleum shipments. The only direct energy benefit to be derived from this invention is the saving that would result from higher efficiency separation of oil and water that would be encouraged by accurate measurement of water content. Energy would not be consumed in the shipment of water around the world. Several indirect benefits would accrue from this invention.

Eligibility

Based on receipt of an unsolicited application, eligibility of this award is being limited to Applied Physics Technology, Inc. Dr. Swanson, the inventor, is a physicist with expertise in the fields of electronics and microwave design, signals processing, hydrodynamics and software development. Dr. Swanson and his associates, the combined experience in relevant fields total nearly 80 years, have the knowledge and experience to perform the work. It has been determined that this project has high technical merit and the technology, if successful, will make a major contribution to the efficiency of the petroleum industry which will result in a reduction in the cost of energy to the American industry and consumers.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rosemarie Marshall, 1000 Independence Avenue SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–6927 Filed 3–22–89; 8:45 am]

BILLING CODE 6550–01–M

Financial Assistance Award; Intent to Award a Grant to L.K. Edwards, dba, Transit Innovations

AGENCY: U.S. Department of Energy, (DOE).

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The DOE announces that pursuant to 10 CFR 600.14, it is issuing a financial assistance award based on an unsolicited proposal submitted by Lawrence K. Edwards, dba Transit Innovations to fund an invention entitled "System 21" a rail rapid transit system constructed above ground.

Scope

The purposes of this grant are the construction of a quarter scale model, complete static and dynamic analyses of the system design and a study of all safety aspects of the systems operation. The design of System 21 offers the promise of supplying rapid rail transit to replace automobiles at a fraction of the cost of present systems. System 21 is an attempt to provide mass transit at lower cost by means of an elevated structure casting a minimal shadow and capable of using existing roadways with minimal obstruction. The proposed activity will offer third party analyses to prove the system's design integrity. These analyses will aid in the correction of any design flaws uncovered and will help to secure the additional capital required for the commercialization process.

Eligibility

Based upon receipt of an unsolicited application, eligibility of this award is being limited to L.K. Edwards dba Transit Innovations. Mr. Edwards is the inventor and currently holds 15 patents, the majority of which are in ground transportation. It has been determined that this project has high technical merit representing an innovative technology which has a strong possibility of allowing for future reductions in the nation's energy consumption.

The term of this grant is six months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Rosemarie H. Marshall, MA–453.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–6928 Filed 3–22–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award a Grant to TubeSonics International, Inc., Norman, OK

AGENCY: U.S. Department of Energy, DOE.

ACTION: Announcement of noncompetitive financial assistance (grant) award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2), the Bartlesville Project Office intends to make a noncompetitive financial assistance (grant) award through the Pittsburgh Energy Technology Center to TubeSonics International, Inc., Norman, OK 73069 for "Ultrasonic Tubular Good Inspection System.

Scope:

The proposed research effort offered by the TubeSonics International, Inc., Norman, OK focuses on the completion of the manufacturing and field testing of an ultrasonic tubular inspection system. This system is designed to be utilized as a new, safe and cost efficient manner for drill pipe inspections by the oil industry. TubeSonics International has invested approximately $4.3 million for research and development of this system since 1981. Successful completion of this project, leading to commercialization of this inspection technique, would contribute to the overall goal of the DOE Enhanced Oil Recovery Program by arresting the decline in the domestic crude oil base. In addition, the increased safety aspects of this research would benefit the general public involved in the production of hydrocarbons.

Authority for this noncompetitive award is 10 CFR 600.7(b)(2)(i)(D). TubeSonics has the exclusive capability to perform these research activities

based upon their existing, unique ultrasonic inspection equipment, and in-house technical expertise.

The term of this grant award is for twelve (12) months at an estimated value to the DOE of $37,537.00

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: Keith R. Miles, Telephone: (412) 892–5984.

Date: March 13, 1989.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division (Acting).

[FR Doc. 89–6929 Filed 3–22–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[ERA Docket No. 89–05–NG]

Tarpon Gas Marketing Ltd.; Application to Export Natural Gas to Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization of export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on January 30, 1989, of an application filed by Tarpon Gas Marketing Ltd. (TGM) requesting blanket authorization to export up to 100 Bcf of natural gas from the United States to Canada for short-term and spot market sales over a two-year period beginning on the date of the first delivery. TGM, a Canadian corporation with its principal place of business in Calgary, Alberta, intends to utilize existing pipeline facilities for transportation of the volumes to be exported.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than April 24, 1989.

FOR FURTHER INFORMATION:

Thomas W. Dukes, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9590.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: On March 8, 1989, TGM filed a request that an authorization be granted on an expedited basis and that the public notice and comment period be shortened to facilitate the issuance of export authority by April 1, 1989. Except in emergency circumstances, the DOE's administrative procedures generally require a 30-day notice period. TGM has not identified any emergency circumstances that would justify deviating from normal practice and shortening the comment period.

In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested export authority. The applicant asserts that this export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that if this blanket export application is granted, the authorization may permit the export of the gas at any point of exit on the international boundary where existing pipeline facilities are located. In addition, the authorization would be conditioned on the filing of quarterly reports giving details of individual transactions to facilitate monitoring of the operation and effectiveness of the blanket program.

NEPA Compliance:

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the Department's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the action is not a major Federal action under NEPA. Unless comments are received indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.s.t., April 24, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto.

Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute

that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of TGM's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 17, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89–6925 Filed 3–22–89; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12)—The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collected and the respondents.

DATES: Comments must be filed on or before April 24, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–588
3. 1902–0144
4. Emergency Natural Gas Sale, Transportation and Exchange Transaction
5. Extension
6. Other
7. Mandatory
8. Businesses or other for profit and small businesses or organization
9. 50 respondents
10. 10 responses
11. 10.00 hours per response
12. 500 hours (total)
13. FERC–588 Emergency Natural Gas Sale, Transportation and Exchange Transaction as authorized by subpart I of Part 284 permits temporary emergency transactions.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), and 790a.

Issued in Washington, DC, March 20, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–6924 Filed 3–22–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89–258–000, et al.]

Long Sault, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 17, 1989.

Take notice that the following filings have been made with the Commission:

1. Long Sault, Inc.

[Docket No. ER89–258–000]

Take notice that Long Sault, Inc. on February 28, 1989, tendered for filing as an initial rate schedule a contract between Long Sault, Inc. and the St. Lawrence County Electric Distribution Agency.

The initial rate schedule provides for Long Sault, Inc. to perform for the St. Lawrence County Electric Distribution Agency certain transmission services and make available certain transmission facilities located near Massena, New York. The St. Lawrence County Electric Distribution Agency desires to secure the right to transmit electric power and energy from the New York Power Authority's St. Lawrence Power Project's Barnhardt Substation to certain facilities leased by the St. Lawrence County Industrial Development Agency from Aluminum Company of America and also located near Massena, New York.

Copies of the filing were served upon the St. Lawrence County Electric Distribution Agency and the Public Service Commission of the State of New York.

Comment date: April 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Tampa Electric Company

[Docket No. ER89–261–000]

Take notice that on March 1, 1989, Tampa Electric Company (Tampa Electric) tendered for filing a Letter Agreement that amends an existing Letter of Commitment providing for the sale by Tampa Electric to Seminole Electric Cooperative, Inc. (Seminole) of 65 megawatts of capacity and energy. As amended by the Letter Agreement, the Letter of Commitment would provide for the sale of supplemental capacity in excess of 65 megawatts, if desired and available.

Tampa Electric states that the Letter Agreement is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric and Seminole,

designated as Tampa Electric Rate Schedule FERC No. 22.

Tampa Electric proposes an effective date, of March 1, 1989, for the amendments to the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: April 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Long Sault, Inc.

[Docket No. ER89-257-000]

Take notice that Long Sault, Inc., on February 28, 1989, tendered for filing as an initial rate schedule a contract between Long Sault, Inc. and the Town of Massena, Massena Electric Department.

The initial rate schedule provides for Long Sault, Inc. to perform for the Town of Massena, Massena Electric Department certain transmission services and make available certain transmission facilities located near Massenas, New York. The Town of Massena, Massena Electric Department desires to secure the right to transmit electric power and energy from the New York Power Authority's St. Lawrence Power Project's Barnhardt Substation to certain substation facilities to be constructed by Town of Massena, Massena Electric Department and located west of the junction of the Grasse River and the Massena Power Canal, near Massena, New York.

Copies of the filing were served upon the Town of Massena, Massena Electric Department, Niagara Mohawk Power Corporation and the New York State Department of Public Service.

Comment date: April 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Minnesota Power & Light Company

[Docket No. ER89-89-000]

Take notice that on February 9, 1989, Minnesota Power & Light Company (MP&L) tendered for filing additional information, at the Commission's request, concerning various agreements designed to change service to Dahlberg Light and Power Company from Superior Water, Light and Power Company, a subsidiary of MP&L, to MP&L.

Comment date: March 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. C.M. Bishop, Jr.

[Docket No. ID-2390-000]

Take notice that on February 24, 1989, C.M. Bishop, Jr. ("Applicant") field an application under the provisions of section 305(b) of the Federal Power Act, and in conformance with 18 CFR 45.8 of the Commission's regulations', seeking an order of this Commission authorizing the Applicant to continue to hold the positions of director of PacifiCorp, a public utility as defined under the Federal Power Act, and Director of First Interstate Bank of Oregon, N.A., a bank and a wholly-owned subsidiary of First Interstate Bancorp.

Neither First Interstate Bancorp nor First Interstate Bank of Oregon, N.A. are authorized by law to underwrite or participate in the marketing of the securities of a "public utility," within the meaning of section 201(e) of the Federal Power Act. However, First Interstate Bancorp owns all of the outstanding capital stock of First Interstate Bank, Ltd., which owns all of the shares of First Interstate Trust Company of New York, which, in turn, owns all of the shares of FIL Holding Company, which, in turn, owns all of the shares of First Interstate Capital Markets Limited ("FICML"), a corporation chartered in the United Kingdom and based in London. FICML (formerly Continental Illinois Limited) became a part of the First Interstate Bancorp corporate structure in August 1984. The Applicant has learned that on one occasion, in January 1985, FICML served as co-manager of an underwriting syndicate for $75,000,000 (U.S.) of 13% Notes due 1992 issued by Gulf States Utilities Company. Gulf States Utilities Company is a "public utility," within the meaning of section 201(e) of the Federal Power Act. That transaction is the only underwriting or participation in the marketing of securities of a "public utility," within the meaning of section 201(e) of the Federal Power Act, by First Interstate Bancorp, First Interstate Bank of Oregon, N.A. or their affiliates.

Comment date: March 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6890 Filed 3-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF89-192-000]

MASSPOWER, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 17, 1989

On March 10, 1989, MASSPOWER, Inc. (Applicant), of 110 Tremont Street, Boston, Massachusetts 02108 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Springfield, Massachusetts. The facility will consist of two (2) combustion turbine generators, two (2) heat recovery boilers and one (1) extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be utilized for industrial and thermal uses at the Monsanto Chemical Company's plant. The net electric power production capacity will be approximately 239.5 megawatts. The primary energy source will be natural gas. Construction of the facility is expected to begin on or about January 1, 1990.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6889 Filed 3-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-980-000, et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

March 15, 1989.

[Docket No. CP89-980-000]

Take notice that on March 9, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-980-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a firm transportation service on behalf of First Chemical Corporation, an end user of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the gas transportation service agreement dated December 5, 1988, proposes to transport a maximum daily quantity of 772.50 MMBtu equivalent of natural gas per day, an average daily quantity of 772.50 MMBtu equivalent of natural gas per day, and an annual quantity of 281,962.50 MMBtu equivalent of natural gas, using existing facilities to provide transportation service pursuant to that agreement. It is stated that the executed agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that transportation service commenced on January 4, 1989, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2313.

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Great Lakes Gas Transmission Company

[Docket No. CP-892-000]

March 15, 1989.

Take notice that of February 24, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89-892-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA), for a certificate of public convenience and necessity authorizing Great Lakes to provide additional firm gas transportation service of 417,500 Mcf per day for TransCanada PipeLines Limited (TransCanada), and to construct and operate facilities required to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Great Lakes states that the TransCanada-Great Lakes Gas Transportation Contract dated September 12, 1967, as amended, provides for firm transportation by Great Lakes of up to a maximum of 987,500 Mcf per day of volumes from a point of interconnection between the facilities of Great Lakes and TransCanada on the International Boundary at Emerson Manitoba (Emerson Interconnect), to points on the International Boundary located at Sault Ste. Marie and St. Clair, Michigan (Sault Ste. Marie and St. Clair Interconnect). Included within the 987,500 Mcf per day quantity is 62,500 Mcf per day for which a request to authorize transportation is currently pending before the Commission in Docket No. CP89-805-000. Great Lakes states that TransCanada has requested the transportation of an additional 417,500 Mcf per day to be received by Great Lakes from TransCanada at the Emerson Interconnect and redelivered to TransCanada at the St. Clair Interconnect. To provide this service, an Amendatory Agreement dated February 8, 1989, has been executed by the parties, which provides for an increase in the firm transportation volumes by 417,500 Mcf per day, to a total of 1,405,000 Mcf per day.

Great Lakes states that TransCanada has advised Great Lakes that the increase in transportation volumes is primarily necessary to satisfy the market requirements of the export customers in the U.S. Northeast. A substantial portion of the proposed service will be utilized in conjunction with the projects previously determined by the Commission to be discrete in its "Order Finding Niagara Import Point Projects Discrete", issued January 12, 1989.[1]

Great Lakes further states that TransCanada has also advised Great Lakes that part of the transportation service will be used for providing sales and transportation service to TransCanada's domestic customers in Eastern Canada.

In order to provide the proposed transportation services, Great Lakes proposes to construct and/or install (1) seventeen loop sections, totalling 459.6 miles, of 36-inch diameter pipe and (2) twenty-five aerodynamic assemblies at various Great Lakes' compressor stations, at a cost of $438,498,900. Further, upon commencement of this service, Great Lakes will receive its volumes from TransCanada at the Emerson Interconnect at a pressure, of 787 pounds per square inch, which is a small increase in pressure, from the pressure of 750 pounds per square at which Great Lakes presently receives the gas from TransCanada at the Emerson Interconnect. The parties have entered into an Amendment to Compression Agreement dated February 8, 1989, to reflect this change.

The rate for transportation of the additional volumes will be the rate effective from time to time under Rate Schedule T-4 of Volume No. 2 of Great Lakes' FERC Gas Tariff, applicable for deliveries at the St. Clair Interconnect.

Comment date: April 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

[1] 46 FERC ¶ 61,019 (1989).

3. Williams Natural Gas Company

[Docket No. CP89-972-000]

March 15, 1989.

Take notice that on March 9, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-972-000 a request pursuant to §§ 157.205 and 284.223 of the Regulations under the Natural Gas Act for authorization to provide transportation for CertainTeed Corporation (CertainTeed) under WNG's blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG requests authorization to transport, on an interruptible basis, up to a maximum of 5,000 MMBtu of natural gas per day for CertainTeed from various receipt points in Colorado, Kansas, Oklahoma and Wyoming to various delivery points on WNG's pipeline system located in Kansas and Missouri. WNG anticipates transporting 3,800 MMBtu on an average day and 1,825,000 MMBtu on an annual basis

WNG states that the transportation of natural gas for CertainTeed commenced on January 20, 1989, as reported in Docket No. ST89-2297-000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP86-631-000. WNG proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP89-1009-000]

March 16, 1989.

Take notice that on March 14, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1009-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Questar Energy Company, (Questar), a marketer of natural gas, under its blanket certificate issued in Docket No. CP86-589, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that it proposes to transport natural gas for Questar from various points of receipt in Wyoming, Kansas, and Colorado to a point of delivery in Sweetwater County, Wyoming.

CIG further states that the maximum daily, average daily and annual quantities that it would transport for Questar would be 15,000 Mcf of natural gas, 13,500 Mcf of natural gas and 4,900,000 Mcf of natural gas, respectively.

CIG indicates that in a filing made with the Commission in Docket No. ST89-1911-000, it reported that transportation service for Questar commenced on January 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89-979-000]

March 17, 1989.

Take notice that on March 9, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-979-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Houston Gas Exchange Corporation, a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of Houston Gas Exchange Corporation from various points of receipt located in Louisiana to points of delivery located in Louisiana.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Houston Gas Exchange Corporation would be 103,000 MMBtu equivalent, 103,000 and 37,595,000 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-2319, filed with the Commission on February 22, 1989, it reported that transportation service for Houston Gas Exchange Corporation had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP89-946-000]

March 17, 1989.

Take notice that on March 3, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-946-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by sale a lateral pipeline and appurtenant facilities in Platte County, Missouri, and the transportation of natural gas through said facilities, under its blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams states that it seeks authorization to abandon by sale to Utilicorp United Inc., d/b/a Missouri Public Service (MPS), approximately 0.2 miles of 4-inch lateral pipeline and appurtenant facilities located in section 12, Township 53 North, Range 35 West, Platte County, Missouri, originally certificated in Docket No. CP71-1, 44 FPC 733 (1970). Williams further states that this pipeline is downstream of its Weston town border station. Williams also states that upon authorization of the abandonment of the facilities, transportation of natural gas through those facilities would also be abandoned. However, Williams indicates that it would continue to transport and or sell natural gas pursuant to contractual obligations at the Weston town border station.

Williams states that Williams and MPS have agreed the pipeline is more appropriately a part of the MPS distribution system. Williams indicates that the reclaim cost is estimated to be $2,330, the salvage value $1,220 and the sales price $1,220.

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP89-990-000]

March 17, 1989.

Take notice that on March 10, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-990-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc. (EGM), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 135,000 MMBtu equivalent of natural gas on a peak day, 135,000 MMBtu equivalent on an average day, and 49,275,000 MMBtu equivalent on an annual basis for EGM. It is stated that Southern would receive the gas at existing points on Southern's system in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi, and Alabama. It is stated that Southern would deliver equivalent volumes at existing points on Southern's system in Georgia. It is asserted that Southern would utilize existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced November 21, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-2429.

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Texas Eastern Transmission Corporation

[Docket No. CP89-930-000]

March 17, 1989

Take notice that on March 1, 1989, Texas Eastern Transmission Corporation (TETCO), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP89-930-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authorization to establish a new delivery point under TETCO's Rate Schedule DCQ-C and I-C service agreements with Carnegie Natural Gas Company (Carnegie) and for permissioin and approval to

abandon another delivery point and delete it from TETCO's Rate Schedule DCQ–C, I–C and SS–2 service agreements with Carnegie, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

TETCO proposes to establish M&R Station No. 2637 as a new delivery point under its Rate Schedule DCQ–C and I–C service agreements with Carnegie as a substitute for the existing M&R Station No. 008 delivery point. TETCO further proposed to abandon M&R Station No. 008 and delete it from TETCO's Rate Schedule DCQ–C, I–C and SS–2 service agreements with Carnegie. TETCO states that the proposed M&R Station No. 2637 delivery point would be located in Pickaway County, Ohio at mileposts 987.74 and 66.91 on TETCO's Line Nos. 2 and 3, respectively. It is stated that M&R Station No. 2637 would consist of a tap and valve to be constructed and owned by TETCO and a measuring and regulating station which is currently being constructed by Columbia Gas of Ohio, Inc. for the purpose of receiving transportation service pursuant to section 311(a) of the Natural Gas Policy Act of 1978 (NGPA). TETCO indicated that upon completion, these facilities would be utilized solely for NGPA Section 311(a) service until TETCO receives Commission authorization to use the facilities to deliver natural gas to Carnegie under Rate Schedules DCQ–C and I–C, as requested herein, or under Rate Schedule SS–2, as requested in TETCO's filing pursuant to 18 CFR 157.205.

TETCO also proposed to abandon and remove M&R Station No. 008. TETCO states that M&R Station No. 008 has become physically deteriorated and obsolete to the extent that it is no longer operable. TETCO indicates that to place the station in good operating condition would require a major overhaul which would not be feasible from either an economic or operational standpoint. It is stated that service to Carnegie would not be affected by the proposed abandonment since deliveries which would have been made through M&R Station No. 008 would be made through M&R Station No. 2637.

TETCO states that inasmuch as section 1(b) of its Rate Schedule DCQ–C does not provide for the execution of new service agreements after October 31, 1987, TETCO is requesting that the Commission grant all waivers necessary to allow TETCO and Carnegie to implement a new service agreement which would reflect the delivery point changes.

TETCO states that its existing effective Rate Schedule DCQ–C and I–C service agreements with Carnegie reflect the following measuring stations and maximum daily delivery obligations (MDDO).

Station	Locations	MDDO (Dekatherms)
M&R Station No. 008.	Greene Co., PA	20,762
M&R Station No. 1275.	Greene Co., PA	46,714
TETCO proposes to implement superseding Rate Schedule DCQ–C and I–C service agreements with Carnegie which would reflect measuring stations and volumes as illustrated below.		
M&R Station No. 2637.	Pickaway Co., PA	20,000
M&R Station No. 1275.	Greene Co., PA	46,714

TETCO asserts that the proposed changes in delivery points would not result in the delivery of gas to Carnegie in excess of currently authorized contract levels. It is stated that the proposed changes in delivery points would provide additional operating flexibility and increase the reliability of the service provided to Carnegie without detriment to TETCO's other customers.

TETCO states that the superseding Rate Schedule DCQ–C and I–C service agreements each provide that TETCO's aggregate maximum delivery obligations under the service agreement and all other service agreements existing between TETCO and Carnegie would not exceed 20,000 dt equivalent and 46,714 dt equivalent for M&R Station Nos. 2637 and 1275, respectively; provided further that interruptible deliveries would be made by TETCO pursuant to the Rate Schedule SS–2 service agrement when capacity is available. TETCO states that it would implement a superseding Rate Schedule SS–2 service agreement which would reflect the deletion of the M&R Station No. 008 delivery point.[2]

Comment date: April 7, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. Tennessee Gas Pipeline Company

[Docket No. CP89–952–000]

March 17, 1988

Take notice that on March 6, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–952–000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas on an interruptible basis for Amtex Gas and Minerals, Inc. (Amtex). Phillips explains that service commenced February 2, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–2397. Tennessee further explains that the peak day quantity would be 50,000 dekatherms, the average daily quantity would be 50,000 dekatherms, and that the annual quantity would be 18,250,000 dekatherms. Tennessee explains that it would receive natural gas for the account of Amtex at a point of receipt located Offshore Louisiana. Tennessee states that the point of delivery is located in the state of Ohio.

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Tennessee Gas Pipeline Company

[Docket No. CP89–950–000]

March 17, 1989

Take notice that on February 28, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–950–000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas on an interruptible basis for Phillips Petroleum Company (Phillips). Phillips explains that service commenced January 31, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–2420. Tennessee further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 100,000 dekatherms, and that the annual quantity would be 36,500,000 dekatherms. Tennessee explains that it would receive natural gas for the account of Phillips at points of receipt located Offshore Louisiana and in the state of Louisiana and Texas. Tennessee states that the points of delivery are located in multiple states.

[2] TETCO states that it has filed a request pursuant to 18 CFR 157.205 to add M&R Station No. 2637 as a new delivery point to its Rate Schedule SS–2 service agreement with Carnegie and to reassign volumes to be delivered under Rate Schedule SS–2 among the existing delivery points and the new delivery point.

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Tennessee Gas Pipeline Company

[Docket No. CP89-961-000]

March 17, 1989

Take notice that on March 8, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No., CP89-961-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-115-999 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tenneessee proposes to transport natural gas on an interruptible basis for Coastal Gas Marketing Company. Phillips explains that service commenced February 2, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2396. Tennessee further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 100,000 dekatherms, and that the annual quantity would be 36,500,000 dekatherms. Tennessee explains that it would receive natural gas for the account of Coastal Gas Marketing Company at points of receipt in the state of Texas. Tennessee states that the points of delivery is located in the state of Texas, Louisiana, Mississippi, New Jersey, Ohio, Tennessee, Kentucky and Alabama.

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP89-995-000]

March 17, 1989

Take notice that on March 13, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-995-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of LaSER Marketing Company (LaSER), under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 618,000 MMBtu of natural gas per day for LaSER from receipt points located in Alabama, Louisiana and Mississippi to delivery points located in Alabama, Louisiana and Mississippi. United anticipates transporting, on an average day 618,000 MMBtu and an annual volume of 225,570,000 MMBtu.

United states that the transportation of natural gas for LaSER commenced February 1, 1989, as reported in Docket No. ST89-2263-000 for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Southern Natural Gas Company

[Docket No. CP89-963-000]

March 17, 1989

Take notice that on March 8, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-963-000 a request pursuant to Section 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of W.R. Grace & Co., Conn., Davison Chemical Division (W.R. Grace), under Southern's blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests authorization to transport, on an interruptible basis, up to a maximum of 600 MMBtu of natural gas per day for W.R. Grace from receipt points located in Louisiana, Texas, Alabama, Mississippi, offshore Texas and offshore Louisiana to a delivery point located in South Carolina. Southern anticipates transporting, on an average day 547 MMBtu and an annual volume of 200,000 MMBtu.

Southern states that the transportation of natural gas for W.R. Grace commenced January 6, 1989, as reported in Docket No. ST89-2249-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Southern in Docket No. CP88-316-000.

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. United Gas Pipe Line Company

[Docket No. CP89-981-000]

March 17, 1989

Take notice that on March 9, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-981-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of LaSER Marketing Company (LaSER), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of LaSER from various points of receipt located in Louisiana to various points of delivery located in Louisiana and Texas.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of LaSER would be 618,000 MMBtu equivalent, 618,000 and 225,570 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-2338, filed with the Commission on February 22, 1989, it reported that transportation service for LaSER had begun under the 120-day automatic authorization provisions of §284.223(a).

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Williams Natural Gas Company

[Docket No. CP89-999-000]

March 17, 1989

Take notice that on March 13, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-999-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim measuring and appurtenant facilities serving the Dean Burger irrigation operation (Burger) in Gray County, Texas, and to abandon the transportation of gas through said facilitates under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that pursuant to a letter agreement dated December 13, 1988, Burger requested discontinuance of the gas service and removal of the metering facilities. WNG estimates that the total cost of the abandonment is appoximately $430 with an estimated salvage value of $175.

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Southern Natural Gas Company

[Docket No. CP89–976–000]

March 17, 1989

Take notice that on March 9, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 3502–2563 filed in Docket No. CP89–976–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (19 CFR 157.205) for authorization to transportation natural gas on an interruptible basis for the City of Hawkinsville, Georgia (Hawkinsville) under the blanket certificate issued in Docket No. CP86–578–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that pursuant to a Transportation Agreement dated December 30, 1988, it proposes to transport up to 3,212 MMBtu per day of natural gas for Hawkinsville under Rate Schedule IT, for a primary term of one month thereafter unless cancelled by either party.

Southern also states that the maximum day, average day, and annual transportation volumes would be approximately 3,212 MMBtu, 800 MMBtu and 292,000 MMBtu, respectively. Southern proposes to receive the gas at various receipts points in Louisiana, offshore Louisiana, Texas, Mississippi, Alabama, and offshore Texas for delivery to a point in Georgia.

Southern further states that it commenced their service January 5, 1989, as reported in Docket No. ST89–2251–000.

Comment date: may 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Natural Gas Pipeline Company of America

[Docket No. CP89–962–000]

March 17, 1989.

Take notice that on March 8, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–962–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for PSI, Inc. (PSI), a marketer, under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated August 12, 1988, it proposes to receive up 25 billion Btu of natural gas per day from PSI at specified receipt points located in Oklahoma, Texas, Offshore Texas, Offshore Louisiana, Illinois, New Mexico, Kansas, Iowa and Arkansas and redeliver the gas at specified points in the state of Missouri. Natural states that the peak day, average day, and annual volumes would be 25 billion Btu, 4 billion Btu, and 1,460 billion Btu, respectively. It is stated that on February 1, 1989, Natural initiated a 120-day transportation service for PSI under § 284.223(a) as reported in Docket No. ST89–2592–000.

Natural further states that no facilities need be constructed to implement the service. Natural states that the primary term of the transportation service would expire August 31, 1990, but would continue month to month thereafter unless cancelled by five days prior notice by either party. Natural proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: May 1, 1989 in accordance with Standard Paragraph G at the end of the notice.

18. ANR Pipeline Company

[Docket No. CP89–993–000]

March 17, 1989.

Take notice that on March 10 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–993–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Centran Corporation (Centran), a marketer, pursuant to ANR's blanket certificate issued in Docket No. C88–532–000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, ANR requests authority to transport up to 100 dt equivalent of natural gas per day on an interruptible basis for Centran pursuant to a transportation agreement dated October 22, 1988, between ANR and Centran Corporation for the benefit of Griffin Real Estate Fund IV. ANR states that the transportation agreement provides for ANR to receive gas from various existing points of receipt located in Offshore Louisiana and Texas and onshore in Louisiana and to redeliver the gas into the facilities of Wisconsin Gas Company in the state of Wisconsin.

ANR indicates it would provide the service for a primary term expiring March 31, 1993, which would continue on a month to month basis until terminated by either party upon thirty days written notice to the other specifying a termination date at the end of such period or any successive monthly period thereafter. ANR states that it woud charge the rates and abide by the terms and conditions of its Rate Schedule ITS.

It is indicated that the estimated maximum daily volume and average volume would be 100 dt equivalent of natural gas and that the annual volume would be 36,500 dt equivalent of natural gas. ANR states that it commence a 120-day transportation service for Centran on January 20, 1989, as reported in Docket No. ST89–2331–000. It is also indicated that ANR would use existing facilities to implement the service.

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Tennessee Gas Pipeline Company

[Docket No. CP89–1015–000]

March 17, 1989

Take notice that on March 15, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1015–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Coastal Gas Marketing Company (Coastal), a marketer, under the blanket certificate issued in Docket No. CP87–115–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated February 8, 1989, under its Rate Schedule IT, it proposes to transport up to 100,000 dekatherms (dt) per day equivalent of natural gas for Coastal. Tennessee states that it would transport the gas from receipt points located offshore Louisiana and deliver such gas to delivery points located in the states of Texas, Louisiana, Mississippi, West Virginia, Kentucky, New Jersey, New York, Pennsylvania, Ohio, Tennessee and Alabama. Tennessee further states that the ultimate point of delivery is located in the state of Michigan.

Tennessee advises that service under § 284.223(a) commenced February 9, 1989, as reported in Docket No. ST89–

2637-000 (filed March 13, 1989). Tennessee further advises that it would transport 100,000 dt on an average day and 36,500,000 dt annually.

Comment date: May 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own reveiw of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6888 Filed 3-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-86-004]

Valero Interstate Transmission Co.; Filing of Refund Report

March 20, 1989

On February 13, 1989, Valero Interstate Transmission Company filed an updated Btu refund report detailing the receipt of $1,101,108.05 in Btu refunds from its producer suppliers, and the flowthrough of this amount, plus additional interest, to its jurisdictional customers.

Any person desiring to do so may submit comments in writing concerning the subject refund report. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before March 31, 1989. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6887 Filed 3-22-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3542-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

DATE: Comments must be submitted on or before April 12, 1989.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Reregistration of Pesticides under 1988 FIFRA Amendments: Phases 1 and 2 (EPA ICR #1496). This is a new collection

Abstract: Under the 1988 amendments to FIFRA, pesticide registrants must tell EPA whether they intend to seek reregistration of their products, and how they will comply with the data requirements needed to support reregistration. Knowledge of registrant data commitments will enable EPA both to monitor progress toward reregistration and to set priorities for completing reregistration within the time frame established by Congress.

Burden Statement: The public reporting burden for this collection of information is estimated to average 10 hours per response for those registrants who are eligible for a Generic Data Exemption and complete only Part A of the Reregistration Worksheet and 42 hours per response for those registrants who must supply data under Parts B and C of the Worksheet. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Pesticide manufacturers and importers.

Estimated No. of Respondents: 5000.

Estimated Total Annual Burden on Respondents: 241,560 hours.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Date: March 20, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-6942 Filed 3-22-89; 8:45 am]

BILLING CODE 6560-50-M

Science Advisory Board, Global Climate Change Subcommittee; Open Meeting

Summary: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given of a public meeting of the Global Climate Change Subcommittee of the Environmental Protection Agency's (EPA) Science Advisory Board. The meeting will be held from 9:00 a.m. to 5:00 p.m. on April 4–5, 1989 in the 11th Floor Conference Room of the U.S. Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Background: In order to help identify the effects of global climate changes brought about by addition of greenhouse gases to the atmosphere, the Congress asked the U.S. EPA to undertake two studies on the greenhouse effect. One study deals with the potential health and environmental effects of climate change including, but not limited to the potential impacts on agricultural, forests, wetlands, human health, rivers, lakes, estuaries as well as societal impacts. The second study examines policy options that if implemented would stablize current levels of greenhouse gas concentrations. Prior to submitting these two reports to the Congress, the EPA's Office of Policy, Planning , and Evaluation (OPPE) has requested Science Advisory Board review of the documents.

Purpose: The purpose of this meeting is for the Subcommittee to review the draft of the second of these studies entitled "Policy Options for Stabilizing Global Climate". The first report was reviewed at a meeting held on November 17–18, 1988.

Supplementary Information: For information concerning this draft document and its availability, please contact Mr. Chris Parker (202) 479–1004. Copies of the draft report are not available from the Science Advisory Board.

For Further Information: Any member of the public wishing further information concerning the Subcommittee or the meeting should contact Mr. Robert Flaak, Executive Secretary, Science Advisory Board (A–101F), U.S. EPA, 401 M Street SW., Washington, DC (202) 382–2552, (FTS) 382–2552. Seating at the meeting is limited and will be on a first come basis.

Date: March 17, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89–6985 Filed 3–22–89; 8:45 am]

BILLING CODE 6560–50–M

[PF–515; FRL–3543–4]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Registration Division (TS–767C), Attention: Product Manager (PM) named in the petition, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/ telephone number	Address
George LaRocca (PM 15).	Rm. 204, CM #2 703–557–2400.	Do
William Miller (PM 16).	Rm. 211, CM #2 703–557–2600.	Do
Lois Rossi (PM 21).	Rm. 227, CM #2 703–557–1900.	Do
Richard Mountfort (PM 23).	Rm. 237, CM #2 703–557–1830.	Do
Robert Taylor (PM 25).	Rm. 245, CM #2 703–557–1800.	Do
Kerry Leifer (PM 45).	Rm. 716, CM #2 703–557–4354.	Do

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows, proposing the establishment and or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 9F3724.* Mobay Corp., Agricultural Chemicals Division, P.O. Box 4913, Kansas City, MO 64120, proposes to amend 40 CFR Part 180 by establishing a regulation to permit the residues of the fungicide tebuconazole (a-[2-(4-chlorophenyl)-ethyl]-a-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol) in or on barley grain at 2.0 ppm, barley grain forage at 5.0 ppm, barley straw at 5.0 ppm, grapes at 2.0 ppm, grass, seed cleanings (including hulls) at 25.0 ppm, grass, seed straw (including chaff) at 30.0 ppm, peanuts at 0.05 ppm, peanut hulls at 3.5 ppm, peanut hay at 50.0 ppm, raisins at 3.0 ppm, wheat grain at 0.40 ppm, wheat grain forage at 4.5 ppm, and wheat straw at 19.0 ppm. The proposed analytical method for determining residues is high-performance liquid chromatography. (PM 21)

2. *PP 9F3725.* Sandoz Crop Protection Corp., 1300 E. Touhy Ave., Des Plaines, IL 60018, proposes to amend 40 CFR Part 180 by establishing a regulation to permit the residues of oxadizyl [2-methoxy-N[2-oxo-1,3-oxazolidin-3-yl) acet-2',6-xylidide] and its desmethyl metabolite [2-hydroxy-N-[2-oxo-1,3-oxazolidin-3-yl)acet-2', 6'-xylidide] in or on fruiting vegetables, leafy vegetables, seed and pod vegetables, cotton, sunflower, root and tuber vegetables, grain crops, forage grasses, and forage legumes at 0.10 ppm. The proposed analytical method for determining residues is gas-liquid chromatography. (PM 21)

3. *PP 9F3729.* Rhone-Poulenc Ag. Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR 180.415 by establishing a tolerance to permit the residues of the fungicide aluminum tris (O-ethyl phosphonate) in or on citrus at 0.50 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 21)

4. *PP 9F3731.* Mobay Corp., Agricultural Chemicals Division, P.O. Box 4913, Kansas City, MO 64120–0013,

proposes to amend 40 CFR 180.436 by establishing a regulation to permit the residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxypheyl)methyl-3-(2,2-dichloroethyenyl)-2,2-dimethylcyclopropanecarboxylate) in or on alfalfa forage at 5.0 ppm, alfalfa hay at 10.0 ppm, broccoli at 2.0 ppm, brussels sprouts at 0.5 ppm, cabbage at 1.0 ppm, cauliflower at 0.5 ppm, carrots at 0.1 ppm, celery at 1.5 ppm, lettuce at 2.5 ppm, peppers at 0.2 ppm, radishes at 0.5 ppm, spinach at 1.0 ppm, sweet corn at 0.05 ppm, sweet corn forage at 54.0 ppm, sunflower seed at 0.02 ppm, sunflower forage at 1.00 ppm, soybeans at 0.03 ppm, soybean forage at 10.0 ppm, soybean hay at 1.5 ppm, soybean straw at 1.0 ppm, tomato at 0.2 ppm, milk at 0.1 ppm, eggs at 0.01 ppm, meat, fat, and meat byproducts of cattle goats, hogs, horses, and sheep at 1.5 ppm, and meat, fat, and meat byproducts of poultry at 0.01 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 15)

5. *PP 9F3732.* E. I. du Pont de Nemours and Co., Inc., Agricultural Products Department, Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19880–0038, proposes to amend 40 CFR Part 180 by establishing a tolerance to permit the residues of the miticide hexythiazox, trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the 4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (expressed as ppm of the parent compound), in or on pears as 0.3 ppm. The proposed analytical method for determining residues is high-pressure liquid chromatography. (PM 15)

6. *PP 9F3738.* Monsanto Co., 1101 17th St., NW., Washington, DC 20036, proposes to amend 40 CFR 180.1082 by establishing a regulation to exempt from the requirement requirement of a tolerance the cross-linked polyurea-type encapsulating polymer when used as an inert encapsulating material for formulations of alachlor (2-chloro-N-(2,6-diethyl-phenyl)-N-(methoxymethyl) acetamide) when used on corn and grain sorghum (milo). (PM 45)

7. *PP 9F3739.* Pennwalt Corp., Agchem Division, Three Parkway, Rm. 619, Philadelphia, PA 19102, proposes to amend 40 CFR Part 180 by establishing a tolerance to permit the residues of the insecticide fluoride in or on Irish potatoes at 1.5 ppm. The proposed analytical method for determining residues is fluoride-specific electrode. (PM 16)

8. *PP 9F3740.* Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, proposes to amend 40 CFR 180.434 by establishing a regulation to permit the residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-lH-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid in or on almonds at 0.10 ppm and almond hulls at 0.10 ppm. The proposed analytical method for determining residues is capillary gas chromatography. (PM 21)

9. *PP 9F3745.* Zoecon Corp., A Sandoz Company, 12005 Ford Rd., Suite 800, LB 44, Dallas TX 75234–7296, proposes amending 40 CFR 180.427 by establishing a regulation to permit the residues of the insecticide fluvalinate (RS-alpha-cyano-3-phenoxybenzyl(R)-2-chloro-4-(trifluoromethyl)anilino-3-methylbutanoate) in or on the raw agricultural commodities beeswax and honey at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 15)

10. *FAP 9H5574.* Mobay Corp., Agricultural Chemicals Division, P.O. Box 4913, Kansas City, MO 64120–0013, proposes amending 40 CFR 185.1250 and 186.1250 by establishing a regulation to permit the residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethyenyl)-2,2-dimethylcyclopropanecarboxylate) in or on sweet corn (cannery wastes) at 1.5 ppm. tomato pomace (wet) at 1.5 ppm, tomato pomace (dry) at 5.0 ppm, tomato concentrated products at 0.5 ppm, soybean hulls at 0.1 ppm, and sunflower hulls at 2.5 ppm. (PM 15)

11. *FAP 9H5575.* Mobay Corp., Agricultural Chemcials Division, P.O. Box 4913, Kansas City, MO 64120–0013, proposed to amend 40 CFR Parts 185 and 186 by establishing a regulation to permit the residues of the fungicide terbuconazole (a-[2-(4-chlorophenyl)ethyl[-a-(1,1-dimethylethyl)-lH-1,2,4-triazole-1-ethanol) in or on barley milled fractions (except flour) at 1.0 ppm, wheat milled fractions (except flour) at 1.0 ppm, grape pomace (wet) at 4.0 ppm, grape pomace (dry) at 12.0 ppm, and raisin waste at 6.0 ppm. (PM 21)

12. *FAP 9H5576.* Monsanto Co., 1101 17th St., NW., Washington, DC 20036, proposes to amend 40 CFR Parts 185 and 186 by establishing a regulation to permit the residues of the herbicide alachlor in or on sorghum milling fractions at 0.5 ppm, sorghum milling fractions (except germ) at 0.3 ppm, and sorghum germ at 0.5 ppm. (PM 25)

13. *FAP 9H5577.* ICI Americas Inc., Agricultural Products, Concord Pike and New Murphy Rd., Wilmington, DE 19897, proposes to amend 40 CFR Part 185 by establishing a regulation to permit the residues of the insecticide lamboda cyhalothrin [(R,S)-a-cyano-(3-phenoxyphenyl)methyl (lS + R)-cis-3-(Z-2-chloro-3,3,3-trichluoroprop-l-ethyl-2,2-dimethyl cyclopropanecarboxylate] in or on food commodities exposed to the insecticide during treatment of food-handling establishment where feed and food products are held, processed, prepared, or served at 0.03 ppm. (PM 15)

14. *FAP 9H5579.* Hoechst Celanese Corp., Route 202–206, P.O. Box 2500, Somerville, NJ 08876–1258, proposes to amend 40 CFR Parts 185 and 186 by establishing a regulation to permit the residues of the insecticide endosulfan (6,7,8,9,10,10-hexachloro-1,5,5a,6,9, 9-a-hexa-hydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide) and its metabolite, endosulfan sulfate (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9,-methano-2-4,3-benzodioxathiepin-3,3-dioxide), in or on dried hops at 10.0 ppm, and spent hops at 10.0 ppm. (PM–15)

Authority: 7 U.S.C. 136a.

Dated: March 20, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89–6967 Filed 3–22–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30081B; FRL 3542–8]

Cypermethrin; Issuance of Conditional Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of conditional registration; request for comments.

SUMMARY: This notice announces the issuance, pursuant to section 3(c)(7)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), of new conditional registrations for products containing the synthetic pyrethroid cypermethrin for use on cotton, pecans, and head lettuce to control various insects. Previous conditional registrations for these pesticide products expired December 31, 1988. The Agency has determined that issuing these new conditional registrations would not cause a significant increase in the risk of unreasonable adverse effects on the environment during the term of conditional registration.

DATE: Comments must be received on or before April 24, 1989.

ADDRESS: Comments, identified by the document control number [OPP–30081B] should be submitted by mail to:

Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide

Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person bring comments to: Rm 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of this comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm 246 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

George T. LaRocca, Product Manager (PM) 15, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2400).

SUPPLEMENTARY INFORMATION: In the Federal Register of January 9, 1985 (50 FR 1112), EPA announced its decision to grant ICI Americas, Inc., (ICI), and FMC Corp. (FMC) conditional registrations for products containing the synthetic pyrethroid active ingredient (±) *alpha*-cyano(3-phenoxyphenyl) methyl(±)-*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethycyclopropanecarboxylate (cypermethrin) for use on cotton to control various cotton insects, for a period which extends to December 31, 1986, to allow time for the submission and evaluation of a full field study (due in April 1986). That document set forth EPA's evaluation of other data that had been submitted, the product's regulatory history, and other facts about cypermethrin.

On June 12, 1985 and June 14, 1985, ICI and FMC, respectively, submitted a letter to the Agency requesting an extension of time to April 15, 1988, for submittal of the field monitoring study. Based upon the justification included in the request, the Agency extended the conditional registrations to December 31, 1988 (50 FR 39172).

On December 22, 1987, ICI requested an administrative extension of 4 months for submission of this study in order to complete all of the biological and residue analysis necessary to prepare a final report. The Agency granted the extension for that short period of time to August 15, 1988, but retained the expiration date for the conditional registrations of December 31, 1988.

On August 23, 1988, ICI Americans Inc. submitted the results of the cypermethrin Alabama field study. EPA reviewed the study and found that the data, as presented, were not scientifically adequate nor sufficiently complete to allow the Agency to evaluate the actual impact that the use of cypermethrin would have on aquatic life forms. The Agency's review of the data indicated that the deficiencies noted during the conduct of the study and in the results reported were serious enough to label the study as unacceptable. Both FMC and ICI disagreed with the Agency's conclusion and argued that the study was scientifically sound; however, not all data generated in the course of this study pertaining to runoff and residues in water and sediment had been submitted to the Agency. ICI and FMC stated that all information including post-treatment year data from 1988 would be submitted in 1989 and indicated their belief that this additional information was necessary in order for the Agency to complete its risk assessment.

On the basis of the above information, EPA seriously considered whether to issue new conditional registrations for cypermethrin. After much thought, on January 3, 1989 the Agency issued new conditional registrations of cypermethrin which will expire on June 15, 1989. These conditional registrations will expire automatically, nothwithstanding fulfillment of the conditions set forth below. Moreover, expiration of these conditional registrations will not give rise to hearing rights pursuant to FIFRA section 6(e).

The Agency issued these new conditional registrations for this short period of time to ICI and FMC in light of their agreement to:

1. Submit all data generated in the course of the cypermethrin Alabama pond study pertaining to runoff and residues in water and sediment to the Agency by January 1989.

2. Submit all other data now in existence and not previously submitted to the Agency, as well as all data generated in the future in the course of the cypermethrin Alabama pond study, as so as is possible.

3. Conduct an aquatic mescosm study (a simulated 2-year field study) for which EPA will develop and provide the protocol no later than April 15, 1989, provided ICI/FMC do not persuade EPA that the current cypermethrin pond study is acceptable.

4. Within 30 days of receipt of an EPA protocol for an aquatic mesocosm study, provide the Agency with written unconditional acceptance of the protocol and an unconditional commitment to conduct the study through completion. For any modification of the protocol to be valid, it must be agreed to by EPA within the above mentioned 30-day period.

As required by section 3(c)(7)(B) of FIFRA, EPA has concluded that the continual use of cypermethrin for this short period of time will not cause a significant increase in the risk of adverse effects to the environment. Upon receipt and evaluation of data relating to the cypermethrin pond study, especially the data not previously submitted, and all other available data, EPA will decide whether the products could be registered under FIFRA section 3(c)(5) or if other regulatory action is warranted.

In accordance with FIFRA section 3(c)(2), a copy of the approved label and the list of data references used to support the continued conditional registrations are available for public inspection in the office of the Product Manager listed under FOR FURTHER INFORMATION CONTACT. The data and other scientific information used to support registration, except for the material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM#2, Arlington, VA 22202.

Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M Street SW., Washington, DC 20460. Such requests should identify the product names and registration number(s) and specify the data or information desired.

Dated: March 9, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89–6968 Filed 3–22–89; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Financially Related Services; Proposed Public Hearing

AGENCY: Farm Credit Administration.

ACTION: Notice of proposed public hearing on financially related services.

SUMMARY: The Farm Credit Administration (FCA) announces its intention to hold a public hearing to solicit views concerning the availability and offering of financially related services to Farm Credit borrowers. although no date has yet been established, a final announcement of the hearing will be published in the **Federal Register** at a later date.

DATE: The date, time, and place of the public hearing will be announced in a future **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4003, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Farm Credit Act of 1971, as amended (the Act), states that Farm Credit institutions may provide technical assistance to borrowers, members, and applicants and "may make available to them at their option such financial [sic] related services appropriate to their on-farm and aquatic operations * * *." Sections 1.12 and 2.5 of the Act (12 U.S.C. 2020 and 2076). *See also* section 3.7 of the Act for similar authority that is granted to banks for cooperatives (12 U.S.C. 2128). The availability of financially related services can have a major impact on Farm Credit borrowers. Therefore, FCA wishes to solicit views of borrowers, Farm Credit institutions, other providers of financially related services, and any other interested parties on: the need for and the availability of financially related services to agricultural borrowers; the financial benefits and risks of offering such services through Farm Credit institutions; the ability of Farm Credit institutions to provide such services; the potential impact of such service on credit provided by Farm Credit institutions; the existing sources of such services by providers which are not Farm Credit instituitions; and other related issues. Accordingly, FCA will hold a hearing to solicit views on various issues concerning financially related services. Further notice will be published in the **Federal Register**.

Date: March 20, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89–6943 Filed 3–22–89; 8:45 am]

BILLING CODE 6705–01–M

[Farm Credit Administration Order No. 889]

Authority Delegations; Authorization to Authenticate Documents, Certify Official Records, and Affix Seal

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: The Acting Chairman of the Farm Credit Administration issued Order No. 889 authorizing certain employees to authenticate documents, certify official records, and affix seal. The text of the Order is as follows:

1. The Secretary to the Board, the Assistant to the General Counsel, the Paralegal Specialist for the Corporate and Administrative Division and the Paralegal Specialist for the Litigation and Enforcement Division, Office of General Counsel, individually, are authorized and empowered:

a. To execute and issue under the seal of the Farm Credit Administration, statements (1) authenticating copies of, or excerpts from official records and files of the Farm Credit Administration; (2) certifying, on the basis of the records of the Farm Credit Administration, the effective periods of regulations, orders, instructions, and regulatory announcements; and (3) certifying, on the basis of the records of the Farm Credit Administration, the appointment, qualification, and continuance in office of any officer or employee of the Farm Credit Administration, or any conservator or receiver acting under the direction of the Farm Credit Administration.

b. To sign official documents and to affix the seal of the Farm Credit Administration thereon for the purpose of attesting the signature of officials of the Farm Credit Administration.

2. The provisions of this Order are effective immmediately and supersede Farm Credit Administration Order No. 878 dated September 15, 1987, which is revoked.

The original order was signed by Marvin Duncan, Acting Chairman, on March 16, 1989.

Dated: March 20, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89–6944 Filed 3–22–89; 8:45 am]

BILLING CODE 6705–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA–REP–1–ME–2]

The Maine Ingestion Pathway Plan Site-Specific for the Seabrook Nuclear Power Station

ACTION: Certification of FEMA Findings and Determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Maine formally submitted the Maine Ingestion Pathway Plan for Seabrook Station for radiological emergencies site-specific the Seabrook Nuclear Power Station. The plan was submitted to the Regional Director of FEMA Region I for FEMA review on February 12, 1987, and again submitted on October 12, 1988, with amendments along with a formal request for FEMA's review, evaluation and approval. The State plan specifies the Maine radiological emergency response in support of offsite planning and preparedness for the Seabrook Nuclear Power Station. Maine is partially within the established ingestion exposure pathway emergency planning zone of the Seabrook Station.

On December 13, 1988, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. The December 13, 1988, evaluation is based on a review of the Maine plan; an evaluation of the joint exercise conducted on June 28–29, 1988, in accordance with §350.9 of the FEMA rule; the Status of Corrective Actions for the 1988 FEMA Graded Exercise; and, a report of the public meeting held on July 2, 1988, to discuss the site-specific aspects of the State of Maine's plan, the New Hampshire Radiological Emergency Response Plan, and New Hampshire Yankee's Seabrook Plan for Massachusetts Communities in accordance with § 350.10 of the FEMA rule.

On December 14, 1988, FEMA provided the Nuclear Regulatory Commission with interim findings and determinations regarding the status of offsite radiological emergency planning and preparedness for Seabrook. For the State of Maine, FEMA found that Maine's ingestion pathway plan and preparedness were adequate to protect

the health and safety of the public in the Maine portion of the ingestion pathway of Seabrook by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and are capable of being implemented.

Based on the December 13, 1988, evaluation and recommendation for approval by the Regional Director and the review by the FEMA Headquarters staff, I reiterate my findings and determination of December 14, 1988, that the Maine Ingestion Pathway Plan and preparedness for the Seabrook Nuclear Power Station are adequate to protect the health and safety of the public in the Maine portion of the ingestion pathway of Seabrook Station.

The offsite plan and preparedness are assessed as adequate in that they provide reasonably assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. Therefore, I approve the Maine Ingestion Pathway Plan for Seabrook Station in accordance with 44 CFR 350.12 of the FEMA rule.

FEMA will continue to review the status of offsite plans and preparedness associated with the Seabrook Nuclear Power Station in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–1–ME–2 maintained by the Regional Director, FEMA Region I, J. W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

Dated: March 16, 1989.

For the Federal Emergency Management Agency.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 89–6857 Filed 3–22–89; 8:45 am]

BILLING CODE 6718–21–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0231, Matrices/Color Code Identification Program for GSA Multiple Award Schedules. Information on the characteristics of products is needed so that GSA contracting officers can prepare matrices for use by Federal Agencies in identifying and ordering the lowest priced item that meets their needs.

AGENCY: Office of GSA Acquisition Policy and Regulations (V), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 1,600; responses, 1 per year; average hours per response, .5; burden hours, 800.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, 202–566–1224.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202–535–7691.

Dated: March 14, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89–6847 Filed 3–22–89; 8:45 am]

BILLING CODE 6820–61–M

Consortium of Federal, Academic and Industry Logistics Experts; Meeting

Notice is hereby given that the Consortium of Federal, Academic, and Industry Logistics Experts will meet April 12, 1989, from 10:00 am to 12:00 noon in Crystal Mall Building 4, Room 1129, Arlington, Virginia. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR 101.6.

The purpose of the meeting is to provide a forum for discussion of logistics issues. The agenda for this meeting will include an update of fiscal year 1989 agenda topics, plus a presentation by Dr. Joseph Mattingly, University of Maryland on the changing environment in logistics.

The meeting will be open to the public.

For further information contact Mr. William B. Foote, Assistant Commissioner for Customer Service and Marketing, GSA/FSS, Washington, DC 20406, telephone (703) 557–7970.

Dated: March 15, 1989.

Donald C.J. Gray,

Commissioner, Federal Supply Service, GSA.

[FR Doc. 89–6850 Filed 3–22–89; 8:45 am]

BILLING CODE 6820–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M–0077]

Abbott Laboratories; Premarket Approval of Murine® Lubricating & Rewetting Drops

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Abbot Laboratories, Columbus, OH, for premarket approval, under the Medical Device Amendments of 1976, of Murine® Lubricating & Rewetting Drops. The device is to be manufactured under an agreement with Paco Pharmaceutical Services, Inc., Lakewood, NJ, which has authorized Abbott Laboratories to incorporate information contained in its approved premarket approval application for the Charter Labs Sterile Lens Lubricant for Sensitive Eyes. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 1, 1989, of the approval of the application.

DATE: Petitions for administrative review by April 24, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On August 9, 1988, Abbott Laboratories, Columbus, OH 43216, submitted to CDRH an application for premarket approval of Murine® Lubricating & Rewetting Drops. The device is indicated for use to lubricate and rewet soft (hydrophilic) contact lenses. The application includes authorization from Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, to incorporate information contained in its approved premarket approval application for the Charter Labs Sterile Lens Lubricant for Sensitive Eyes.

On February 1, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 24, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 16, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–6908 Filed 3–22–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M–0076]

Abbott Laboratories; Premarket Approval of Murine® Preserved Multi-Purpose Saline Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Abbott Laboratories, Columbus, OH, for premarket approval, under the Medical Device Amendments of 1976, of Murine® Preserved Multi-Purpose Saline Solution. The device is to be manufactured under an agreement with Paco Pharmaceutical Services, Inc., Lakewood, NJ, which has authorized Abbott Laboratories to incorporate information contained in its approved premarket approval application for the Charter Labs Saline for Sensitive Eyes. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of February 1, 1989, of the approval of the application.

DATE: Petitions for administrative review by April 24, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On August 9, 1988, Abbott Laboratories, Columbus, OH 43216, submitted to CDRH an application for premarket approval of Murine® Preserved Multi-Purpose Saline Solution. The device is indicated for use as a rinsing/soaking solution for the Murine® PureSept® Disinfection System, for rinsing, heat disinfection and storage or as a rinse following chemical disinfection of soft (hydrophilic) contact lenses, as recommended by the eye care practitioner. The application includes authorization from Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, to incorporate information contained in its approved premarket approval application for the Charter Labs Saline for Sensitive Eyes.

On February 1, 1989, CDRH approved the application by letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 24, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 16, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–6907 Filed 3–22–89; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. April 7, 1989, 8:15 a.m., Parklawn Bldg., Conference Rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, April 7, 1989, 8:15 a.m. to 10:50 a.m.; closed committee deliberations, 10:50 a.m. to 11:20 a.m.; open public hearing, 11:20 a.m. to 12:20 p.m., unless public participation does not last that long; closed committee deliberations, 1:15 p.m. to 2:15 p.m.; open committee discussion, 2:15 p.m. to 4:15 p.m.; Jack Gertzog, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 24, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a pending treatment investigational new drug application (IND) for IMREG–I.

Closed committee deliberations. The committee will review trade secret or confidential commercial information relevant to the pending IND. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)). Seating is limited and the public will be accommodated on a first come, first serve, basis.

Ophthalmic Devices Panel

Date, time, and place. April 13 and 14, 1989, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, April 13, 1989, 9 a.m., to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; open public hearing, April 14, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Daniel W. C. Brown, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7320.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 21, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On April 13, 1989, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses (IOL's) and other class III surgical or diagnostic devices, and may discuss specific PMA's for these devices. If discussion of all pertinent IOL or other class III surgical or diagnostic device issues are not completed, discussion will be continued the following day. On April 14, 1989, the committee will discuss PMA's for contact lenses and other devices and requirements for PMA approval.

Closed committee deliberations. The committee may discuss trade secret or confidential commercial information relevant to PMA's for IOL's, surgical or diagnostic devices, contact lenses, or other ophthalmic devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. April 24, 1989, 8:30 a.m., Rm. 503A–529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HZF–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 14, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for prosthetic heart valves, a percutaneous transluminal coronary angioplasty

catheter, and possibly a percutaneous transluminal perfusion coronary angioplasty catheter.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Arthritis Advisory Committee

Date, time, and place. April 24 and April 25, 1989, 8:30 a.m., Lister Hill Auditorium, National Library of Medicine, National Institutes of Health, Bldg. 38A, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, April 24, 1989, 8:40 a.m. to 9:40 a.m., unless public participation does not last that long; open committee discussion, 9:40 a.m. to 4:30 p.m.; closed committee deliberations, April 25, 1989, 8:30 a.m. to 4 p.m.; David F. Hersey, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in arthritis and related diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 7, 1989, and submit a brief statement on the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) changes in the investigational new drug (IND) and new drug application review process in the anti-inflammatory drug product group and possible new roles for the advisory committee; and (2) a change in the policy for labeling analgesics.

Seating capacity is limited and seating for the public will be on a first come, first serve, basis.

Closed presentation of data. The committee will review trade secret or confidential commercial information relevant to IND 22,545. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

General and Plastic Surgery Devices Panel

Date, time, and place. April 27, 1989, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7238.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 6, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a polypropylene surgical suture and a supplemental application for a gelatin matrix implant. The committee may also provide guidance on clinical trial design for electrical/magnetic stimulation devices for wound healing.

Closed committee deliberations. The committee may discuss trade secret or confidential commercial information regarding the manufacture of a polypropylene suture or a gelatin matrix implant. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject ot FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the

Freedom of Information Office (address above) beginning approximatley 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: March 19, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–6963 Filed 3–21–89; 11:10 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[OIS–004–N]

Quarterly Listing of Program Issuances

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice lists HCFA manual instructions, interpretative rules, and statements of policy that were published during October, November and December 1988 that relate to the Medicare program. Section 1871(c) of the Social Security Act requires that we publish a list of our issuances in the Federal Register every three months.

FOR FURTHER INFORMATION CONTACT:
Allen Savadkin, (301) 966–5265 (For Issuance Information Only)
Matt Plonski, (301) 966–4622 (For Regulation Information Only)

SUPPLEMENTARY INFORMATION: The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program which pays for health care and related services for 33 million Medicare beneficiaries. Administration of the program involves effective communications with regional offices, State governments, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To effectively communicate interpretations of the various statutes on which the program is based, we issue regulations under authority granted the Secretary under sections 1102 and 1871 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the program efficiently.

Section 1871(c)(1) of the Social Security Act requires that we publish in the Federal Register no less frequently than every three months a list of all Medicare manual instructions, interpretative rules, statements of policy, and guidelines of general applicability. This is the fourth listing of issuances. (See 53 FR 21730, June 9, 1988, 53 FR 36891, September 22, 1988, and 53 FR 50577, December 16, 1988 for our listing of materials issued from December 22, 1987, the effective date of OBRA '87, through December 31, 1988). As in prior notices, although regulations published in accordance with section 1871(a) of the Act are not subject to the publication requirement of section 1871(c), for the sake of completeness of the listing of operational and policy statements we are including regulations (proposed and final) published.

A. How to Use the Listing

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, or regulations published during this timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our manuals may wish to review Table I of our first three notices (53 FR 21731, 53 FR 36892, and 53 FR 50579), and those seeking information on the location of regional depository libraries may wish to review Table IV of our first notice (53 FR 21736). We have divided this current listing into two tables.

Table I of this notice lists, for each of our manuals or Program Memoranda, a transmittal number unique to that instruction and a brief statement of its subject matter. The subject matter in a transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Table II lists all Medicare and Medicaid regulations and general notices published in the Federal Register during this period. For each item, we list the date published, the title of the regulation, and the Parts of the Code of Federal Regulations (CFR) which have changes.

B. How to Obtain Listed Material

• *Manuals*

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the

following addresses: Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone (202) 783–3238; National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161. Telephone (703) 487–4630.

In addition, individual manual transmittals listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS will give complete details on how to obtain the publications they sell. Program Memoranda will soon be available for sale thorugh NTIS. (see subsection C.)

• *Regulations and Notices*

Regulations and notices are published in the daily **Federal Register.** Interested individuals may purchase individual copies or may subscribe to the **Federal Register** by contacting the Government Printing Office at the following address: Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone (202) 783–3238. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. How to Review Listed Material

Transmittals or Programs Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the Federal Depository Library Program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the Federal Depository Libraries. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal Government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the closest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Table I, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal numbers. For example, to find the Regional Office Manual Medicare (HCFA-Pub. 23–2) transmittal containing "Priority I Critical Tasks" use the Superintendent of Documents number HE 22.8/8 and the HCFA transmittal number 303.

D. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact person. Individuals are expected to procure copies or arrange to review them as noted above.

Questions concerning items in Table I may be addressed to Allen Savadkin, Office of Issuances, Health Care Financing Administration, Room 688 East High Rise, 6325 Security Boulevard., Baltimore, MD 21207; Telephone (301) 966–5265.

Questions concerning the regulations in Table II may be addressed to Matt Plonski, Regulations Staff, Health Care Financing Administration, Room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (301) 966–4662.

Table I.—Medicare Manual Instructions October–December 1988

Trans. No.	Manual/Subject/Publication Number
	Intermediary Manual Part 2—Audits, Reimbursement, Program Administration (HCFA-Pub. 13–2) (Superintendent of Documents No. HE 22.8/6.2)
363	● Intermediary Coverage Compliance Reviews
364	● The Contractor Performance Evaluation Program—FY 89
365	● Maximum Payment Per Visit for Independent Rural Health Clinics
366	● Completion of the Report of Benefit Savings (RBS)
	Intermediary Manual Part 3—Claims Process (HCFA-Pub. 13-3) (Superintendent of Documents No. HE 22.8/6)
1407	● Definitions Action Where Medicare is Secondary to EGHP Recovery of Incorrect Primary Medicare Payments Incorrect EGHP Primary Payments Recovery of Incorrect Primary Medicare Payments
1408	● Intermediary Coverage Compliance Review
1409	● Review of Form HCFA-1450 for Inpatient and Outpatient Bills
1410	● Index
1411	● Definitions, Employee
1412	● Advanced Record System, Admission and Query Procedures
1413	● Heart Transplants Notifying Carriers
1414	● Champus (Civilian Health and Medical Program of the Uniformed Services) and CHAMPVA (Civilian Health and Medical Program of the Veterans Administration) Review of Form HCFA-1450 for Inpatient and Outpatient Bills
1415	● Provider Specific File Provider Specific Data Record Layout and Description Intermediary Responsibility
IM-88-9	● Planning for Implementation of HCPCS for Hospital Outpatient Radiology Services
IM-88-10	● Part-Time or Intermittent Home Health Aide and Skilled Nursing Care Medical Review of Home Health Services
	Intermediary Manual Part 4—Audit Procedures (HCFA-Pub. 13–4) (Superintendent of Documents No. HE 22.8/6–4)
26	● Audit Priority Matrix Carriers Manual Part 2—Program Administration (HCFA-Pub. 14–2) (Superintendent of Documents No. HE 22.8/7–3)
107	● Standard 12
108	● Functional Standards for Claims Processing Operations Claims Processing Timeliness Medicare Carriers Manual Part 3—Claims Process (HCFA-Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)
1272	● Definitions Multiple Insurers Recovery of Incorrect Primary Medicare Payment EGHP Pays Primary Benefits When Not Required
1273	● Optometrists Preadmission Diagnostic Services Furnished
1274	● National Registry of Physicians
1275	● Definitions, Employee
1276	● Postpayment Process Requirements Postpayment Review Processes Annual Report Prepayment Review Personnel and Procedures Annual Postpayment Medical Review Report Postpayment Comprehensive Medical Review Summary Report Provider Audit List Medical Staff Statement Glossary of MR Terms
1277	● Home Dialysis Patients Option for Billing Record Codes and Trailers
1278	● Nurse-Midwife Services Purchased Diagnostic Tests General Explanation of Denial Message
1279	● Professional Relations Professional Relations for HCPCS HCPCS Training Fee Schedules for Durable Medical Equipment (DME) and Orthotic/Prosthetic Devices Floors for Primary Care Services

Table I.—Medicare Manual Instructions October–December 1988—Continued

Trans. No.	Manual/Subject/Publication Number
	Determining Reasonable Charges for Services of Physician Assistants (PAs)
1280	● Checking for Status General Information About Communications Between Carriers and HCFA Limitation of Noninpatient Psychiatric Expenses Adjustment in Beneficiary Status—Query Next Claim, Code 72 Query Reject Conditions, Code 86 Record Codes and Trailers Part B Replies Disposition Codes and Possible Trailers Query Reply With All Trailer Codes Preparation of Payment Records for Bills Covering Outpatient Psychiatric Services Psychiatric Maximum Part B Payment Record Alerts Coding Physician Specialty Coding Type of Supplier Coding Type of Service for Group Practice Prepayment Plans
1281	● Payment for Immunosuppressive Drugs Determination of Eligibility
1282	● Explanatory and Denial Messages Tables of EOMB Statements Statements for Unassigned Claims
1283	● Physician or Supplier Information Billings for Physician Assistant Services Content of the Payment Record
1284	● Durable Medical Equipment—Billing and Payment Considerations Under the Fee Schedule

Program Memorandum
Intermediaries (HCFA-Pub. 60A)
(Superintendent of Documents No. HE 22.8/6-5)

A-88-22	● Results of National Study of Hospital Outpatient Services
A-88-23	● Provider Billing for Services Ordered But Not Provided
A-88-24	● Change in the Time Requirements for Furnishing Provider Summary Reports
A-88-25	● Special Procedures for Home Health Coverage Compliance Reviews and Post Payment Audits During Transition Period
A-88-26	● Update Data for Determining Additional Payment Amounts for Hospitals With a Disproportionate Share of Low Income Patients
A-88-27	● Implementation of FY 1989 Medicare Prospective Payment System (PPS) Changes
A-88-28	● Medical Education Issues Raised During Reviews of Hospital Cost Report Settlements
A-88-29	● End Stage Renal Disease (ESRD) Composite Rates
A-88-30	● Application of Intermediary Manual—Part 3 Transmittal IM-88-10 to Claims Submitted on or After February 17, 1987 but Before the Effective Date for Reporting of Hours of Service on the HCFA 486—Effectuation of Duggan v. Bowen
A-88-31	● Provider-Based HHA and Provider-Based Hospice Transfer Requirements

Table I.—Medicare Manual Instructions October–December 1988—Continued

Trans. No.	Manual/Subject/Publication Number
A-88-32	● Direct Medicare Billing by Certified Registered Nurse Anesthetists (CRNAs)

Program Memorandum
Carriers (HCFA-Pub. 60B)
(Superintendent of Documents No. HE 22.8/6-5)

B-88-19	● Non-Physician Part B Reasonable Charge Update Information
B-88-20	● FY 89 Reasonable Charge Update and Participation Program—Physicians/Suppliers
B-88-21	● Linoz v. Bowen Class Action
B-88-22	● January 1989 Reasonable Charge Update Reminder for Purchased Diagnostic Tests
B-88-23	● Release of DME Fee Schedule Data

Program Memorandum
Intermediaries/Carriers (HCFA-Pub. 60A/B)
(Superintendent of Documents No. HE 22.8/6-5)

AB-88-12	● Review of Tissue Plasminogen Activator to Identify Potential Program Abuse
AB-88-13	● Billing Procedure for New HCPCS Code Q0034

State Operations Manual
Provider Certification (HCFA-Pub. 7)
(Superintendent of Documents No. HE 22.8/12)

212	● Emphasis, Components and Applicability The Survey Report
213	● Interviewing Residents Using the Long Term Care Survey Process Assistance in Surveying Psychiatric Hospitals Termination Procedures—Noncompliance With One or More Conditions of Participation or Coverage and Cited Deficiencies Limit Capacity or Provider/Supplier to Furnish Adequate Level or Quality of Care (Medicare) Excluding SNFs Intervening Actions That Do Not Postpone or Delay the Termination Timetable Termination—Documentation Requirements
214	● Interpretive Guidelines for Independent Laboratories
215	● Identificaiton of Potential Providers and Suppliers Hospital Providers of Extended Care Services (Swing-Beds) Citations and Description Requirements Assessed Prior to Survey for Swing-Bed Approval Survey Procedures for Swing-Bed Approval Post Survey Procedures for Swing-Bed Hospitals Psychiatric Hospitals Accredited Hospitals Not Deemed to Meet Special Conditions of Participation Distinct Part Psychiatric Hospital
216	● Verification of Hospitals and Hospital Units Excluded from the Prospective Payment System (PPS) General Information on PPS Exclusion Criteria for PPS-Excluded Hospitals

Table I.—Medicare Manual Instructions October–December 1988—Continued

Trans. No.	Manual/Subject/Publication Number
	Criteria for Psychiatric and Rehabilitation Units PPS Exclusion Verification Procedures

Regional Office Manual
Medicare (HCFA-Pub. 23-2)
(Superintendent of Documents NO. HE 22.8/8)

302	● Appendix A QA—Uniform contractor Evaluation Program
303	● Priority I Critical Tasks Retention of Documentation Target Dates In Preparing ACERs Control of ACERs Distribution of ACERs ACERs for Multi-Regional Contractors Evaluation of Contractors Under Experimental Contracts Scoring Methodology Corrective Action Plan (CAP) Required or Developed During the Review Period ACER Format Executive Summary Performance Criteria ACER/FORMAT Special Reviews
304	● Quality Measurement System

Regional Office Manual
Standards and Certification (HCFA-Pub. 23-4)
(Superintendent of Documents No. HE 22.8/8-3)

35	● Termination or Denial of Payments for New Admissions for SNFs When One or More Conditions of Participation Are Not Met and Cited Deficiencies Limit the Provider's Capacity to Furnish an Adequate Level or Quality of Care Termination of Psychiatric Hospital Based on HCFA Mental Health Surveyor's Survey Utilization of HCFA Surveyors in Certification, Validation, and Complaint Surveys of Psychiatric Hospitals Noncompliance with One or More Conditions of Participation or Coverage and the Deficiencies Pose an Immediate and Serious Threat to Patient Health or Safety Noncompliance with One or More Conditions of Participation or Coverage and Cited Deficiencies Limit the Provider's/Supplier's Capacity to Furnish an Adequate Level or Quality of Care Services—Excluding SNFs Rescinding or Postponing the Effective Date of Termination Terminating Medicaid Facilty's Eligibility Based on "Look Behind" Determination
36	● Approval of Extended Care Services (Swing-Beds) in Hospitals Special Requirements for Swing-Bed Hospitals with 50–99 Beds Approval Procedures for Hospitals in the 50–99 Bed Category Dispute Procedures Regarding Geographic Region Approval Letter for Extended Care Services (Swing-Beds) in Hospitals (50–99 Beds)

Table I.—Medicare Manual Instructions October–December 1988—Continued

Trans. No.	Manual/Subject/Publication Number
	Notice to Skilled Nursing Facilities that a Hospital Has Been Approved to Provide Extended Care Services (Swing-Bed Services)
37	● Assignment of Provider and Supplier Identification Numbers Hospitals and Hospital Units Excluded From the Prospective Payment System (PPS)
38	● Processing Renewal Applications for License Provider Status: Renal Transportation Center and Renal Dialysis Center
	Hospital Manual (HCFA-Pub. 10) (Superintendent of Documents No. HE 22.8/2)
553	● Limitation on Payment for Services to Individuals Entitled to Benefits Solely on the Basis of End Stage Renal Disease Who Are Covered by Employer Group Health Plans Intermediary Recovery of Primary Benefits Recovery When a State Agency Has Also Requested a Refund
554	● Completion of Form HCFA-1450 for Inpatient and/or Outpatient Billing
555	● Medicare as Secondary Payer for Disabled Individuals
556	● Swing-Bed Services
557	● Definitions Identification of Individuals Subject to This Limitation on Payments Action by Hospital Where Employer Group Health Plan is Primary Payer
	Home Health Agency Manual (HCFA-Pub. 11) (Superintendent of Documents No. HE 22.8/5)
215	● Limitation on Payment for Services to Individuals Entitled to Benefits Solely on the Basis of End Stage Renal Disease Who Are Covered by Employer Group Health Plans Intermediary Recovery of Primary Benefits Recovery When a State Medicaid Agency Has Also Requested a Refund
216	● Completion of Form HCFA-1450 for Home Health Agency Billing
217	● Definitions Identification of Individuals Subject to This Limitation on Payments Action by Home Health Agency Where Employer Group Health Plan Is Primary Payer
218	● Definitions General Effect of Liability Insurance on Medicare Payments Effect of Payment by Liability Insurer on Deductibles and Utilization Provider Billing Rights and Responsibilities Provider Actions
IM-88-3	● Part-Time or Intermittent Home Health Aide and Skilled Nursing Care Medical Update and Patient Information

Table I.—Medicare Manual Instructions October–December 1988—Continued

Trans. No.	Manual/Subject/Publication Number
	Skilled Nursing Facility Manual (HCFA-Pub. 12) (Superintendent of Documents No. HE 22.8/3)
272	Limitation on Payment for Services to Individuals Entitled to Benefits Solely on the Basis of End Stage Renal Disease Who Are Covered by Employer Group Health Plan ● Intermediary Recovery of Primary Benefits Recovery When a State Medicaid Agency Has Also Requested a Refund
273	● Completion of Form HCFA-1450 for Inpatient and/or Outpatient Billing
274	● Special Rules for Services Furnished to ESRD Beneficiaries by Source Outside EGHP Prepaid Health Plan Definitions Identifications of Individuals Subject to This Limitation on Payments Action by SNF Where Employer Group Health Plan Is Primary Payer Medical Services Furnished by Source Outside EGHP Prepaid Health Plan
275	● Definitions General Effect of Liability Insurance on Medicare Payments Effect of Payment by Liability Insurer on Deductible and Utilization Provider Billing Rights and Responsibilities Provider Actions
	Rural Health Clinic Manual (HCFA-Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
31	● Limitation on Payment for Services to Individuals Entitled to Benefits Solely on the Basis of End Stage Renal Disease Who Are Covered by Employer Group. Health Plans Intermediary Recovery of Primary Benefits Recovery When a State Medicaid Agency Has Also Requested a Refund
32	● Maximum Payment Per Visit for Independent Rural Health Clinics
	Health Maintenance Organization/Competitive Medical Plan Manual (HCFA-Pub. 75) (Superintendent of Documents No. HE 22.8)
IM-88-2	● Preparation of ACRPs
	Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29) (Superintendent of Documents No. HE 22.8/13)
37	● Limitation on Payment for Services to Individuals Entitled to Benefits Solely on the Basis of End Stage Renal Disease Who Are Covered by Employer Group Plans
	Hospice Manual (HCFA-Pub. 21) (Superintendent of Documents No. HE 22.8/18)
20	● Medicare as Secondary Payer Amount of Secondary Payments Effect of Primary Payment on Utilization

Table I.—Medicare Manual Instructions October–December 1988—Continued

Trans. No.	Manual/Subject/Publication Number
	Determining Amount of Primary Payment That Applies to Medicare Services Right of Recovery Private Right of Action Rules Relating to Veterans Benefits
	Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9) (Superintendent of Documents No. HE 22.8/9)
81	● Limitation on Payment for Services to Individuals Entitled to Benefits Solely on the Basis of End Stage Renal Disease Who Are Covered by Employer Group Health Plans Intermediary Recovery of Primary Benefits Recovery When a State Medicaid Agency Has Also Requested a Refund
82	● Lump-Sum Compromise Settlement Lump-Sum Commutation of Future Benefits Handling of Cases Involving Work-Related Conditions Workers' Compensation Has Paid or Is Expected to Pay Workers' Compensation Denies Payment Processing of Claims Involving Black Lung Disease Possible Coverage Also Under Auto Medical or No Fault Insurance or Employer Group Health Plan Private Right of Action Examples of Services Covered by DOL Where No Certificate of Medical Necessity Is Required
83	● Completion of Form HCFA-1450 for Billing CORF, Outpatient Physical Therapy, Occupational Therapy or Speech Pathology Services
	Provider Reimbursement Manual (HCFA-Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
349	● Travel Expense
IM-88-1	● Guidelines for those Hospitals Receiving Periodic Interim Payments or Participating in the Swing-Bed Program

TABLE II.—REGULATIONS AND NOTICES PUBLISHED OCTOBER–DECEMBER, 1988—FINAL RULES

Publication date/cite	42 CFR part	Title
10/03/88 (53 FR 38835).	405, 412, 413, and 489.	Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1989 Rates (Corrects Final Rule published 09/30/88).
10/14/88 (53 FR 40231).		Medicare Program; Indirect Part B Payment (Corrects Final Rule published 07/28/88).
11/22/88 (53 FR 47199).	405, 406, and 407.	Medicare Program; Hospital Insurance Entitlement and Supplementary Medical Insurance Enrollment and Entitlement.

TABLE II.—REGULATIONS AND NOTICES PUBLISHED OCTOBER–DECEMBER, 1988—FINAL RULES—Continued

Publication date/cite	42 CFR part	Title
12/02/88 (53 FR 48645).	74, 405, and 441.	Medicare and Medicaid Programs; Medicare, Medicaid, and Clinical Laboratories Improvement Act (CLIA) Patient Confidentiality Rules.
		Proposed Rules
10/26/88 (53 FR 43320).	435 and 436.	Medicaid Program; Eligibility of Aliens for Medicaid (Corrects proposed rule published 09/29/88).
12/28/88 (53 FR 52448).	1001 ...	Medicare and Medicaid Programs; Fraud and Abuse OIG Anti-kickback Provisions (Withdrawal of proposed rule published December 23, 1988).
12/30/88 (53 FR 53025).	405	Medicare Program; Physician Liability on Non-Assigned Claims.
		Notices
10/05/88 (53 FR 39150).		Medicare Program; Billing and Verification Add-on Relating to Home Health Agencies Cost Per Visit Limits.
10/11/88 (53 FR 39644).		Medicare Program; Request for Comments on Payment for Chemotherapy in Physicians' Offices.
10/11/88 (53 FR 39645).		Medicare Program; Carrier Bonuses for Increasing Physicians' Participation or Payments Procedure (Corrects final rule published 07/28/88).
10/17/88 (53 FR 40494).		Medicare Program; Hospice Cap.
10/18/88 (53 FR 40771).		Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1988.
10/20/88 (53 FR 41242).		Medicare Program; SNF Coinsurance Amount for 1989.
11/01/88 (53 FR 44144).		Medicaid Program; Inpatient Hospital Deductible for 1989 (Corrects a notice published September 30, 1988).
11/15/88 (53 FR 45984).		Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting.
11/15/88 (53 FR 45984).		Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s).
11/15/88 (53 FR 46015).		Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting on or After July 1, 1988 (Corrects notice published October 18, 1988).
11/23/88 (53 FR 47581).		Medicare Program; Meeting of the Advisory Committee on Home Health Claims.
11/28/88 (53 FR 47873).		Medicare Program; Meeting of the Supplementary Health Insurance Panel.
12/06/88 (53 FR 49233).		Medicare Program; Employers and Duplicative Medicare Benefits.
12/14/88 (53 FR 50293).		Medicare and Medicaid Programs; Health Care Financing Research and Demonstration; Availability of Funds for Cooperative Agreements and Grants, Medicare Catastrophic Coverage Act of 1988.
12/16/88 (53 FR 50577).		General Notice of Quarterly Listing of Program Issuances.
12/21/88 (53 FR 51321).		Medicare Program; Data, Standards and Methodology Used to Establish Budgets for Fiscal Intermediaries and Carriers.

(Catalog of Federal Domestic Assistance Program No. 13.773, Hospital Insurance; and Program No. 13.774, Medicare-Supplement Medical Insurance Program)

Dated: March 10, 1989.

Terry Coleman,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89–6905 Filed 3–22–89; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–09–4212–22]

Filing of Official Protraction Diagrams and Order Providing for Opening of Lands; Nevada

March 10, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of four Protraction Diagrams in Nevada.

EFFECTIVE DATES: Filings will be effective at 10:00 a.m. on May 2, 1989.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–784–5484.

SUPPLEMENTARY INFORMATION: The following listed Protraction Diagrams will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on May 2, 1989:

Mount Diablo Meridian

Protraction Diagram No. 309—Tps. 28 N., Rs. 23 and 24 E.
Protraction Diagram No. 310—Tps. 27 N., Rs. 23 and 24 E.
Protraction Diagram No. 311—Tps. 26 N., Rs. 23 and 24 E.
Protraction Diagram No. 312—Tps. 25 N., Rs. 23 and 24 E.

The area protracted is Winnemucca Lake, a dry lake bed, located adjacent to the east boundary of the Pyramid Lake Indian Reservation.

Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands encompassed by the protraction diagrams will be open at 10:00 a.m. on May 2, 1989, to mineral leasing.

The lands have been and continue to be open to mining location. No transfer of title to the lands will be allowed except pursuant to the mining laws until official plats of survey are approved and the lands opened to disposition.

All of the above listed protraction diagrams are now the official basic record of describing the lands for all authorized purposes. The diagrams will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the protraction diagrams may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,

State Directory, Nevada.

[FR Doc. 89–6935 Filed 3–22–89; 8:45 am]

BILLING CODE 4310–HC–M

Susanville District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior, Susanville District Grazing Advisory Board, Susanville, California.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of the Interior's discretionary authority on May 14, 1986, will meet on May 3, 1989.

The May 3 meeting will begin at 10:00 a.m. at the Susanville District Office, Bureau of Land Management, 705 Hall Street, Susanville, California. The meeting will be a joint meeting with the Susanville District Advisory Council from 10:00 a.m. until 2:00 p.m.

Subjects to be covered during the joint session are the Silver State Water Project, improving the adaptability of wild horses in the Susanville District,

and problems with the East Lassen Deer Herd.

After 2:00 p.m. the Susanville District Grazing Advisory Board will continue in single session to deal with other matters as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 p.m. and 4:30 p.m., or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 89-6838 Filed 3-22-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-09-4212-11; CA-15906]

Realty Action; Conveyance of Public Land for Recreation and Public Purposes in Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; classification of public lands for disposal for recreation and public purposes.

SUMMARY: The following described public land has been determined suitable for classification and for lease or conveyance pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.):

Mount Diablo Meridian, California

T. 30 S., R. 37 E.,
Sec. 1, lots 5 through 20;
Sec. 2, E½SE¼E¼, E½E¼;
Sec. 11, lot 1;
Sec. 12, E½, E½W½, NW¼NW¼, NW¼SW¼.

Containing 1159.79 acres.

These lands are hereby classified suitable for disposal under the aforementioned Act. Upon publication of this notice in the **Federal Register**, the subject lands shall be segregated from all other forms of appropriation under the public land laws, including the general mining laws, but not the mineral leasing laws.

SUPPLEMENTARY INFORMATION: The State of California has requested the subject lands pursuant to the R&PP Act for additions to the existing Red Rock State Park. Acquisition of these lands will facilitate management of the park and reduce conflicts with incompatible uses. Based upon experience with the State's past performance in management of the park and analysis of proposed future uses, direct patent without the initial lease and development stage is deemed in the public interest. Pursuant to the Act, the lands will be conveyed without monetary consideration.

The subject land is not required for any Federal project or program, and disposal is consistent with Bureau land use planning. The land is considered chiefly valuable for disposal under the Act, and such disposal is deemed to be in the public interest.

The lease/patent document shall be subject to the provisions of the Act and applicable regulations of the Secretary of the Interior, and to the following reservations to the United States:

1. All minerals.

2. A right-of-way thereon for ditches and canals constructed by authority of the United States; Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. Rights-of-way for highway purposes within section 11, Lot 1, pursuant to the Act of November 9, 1921 (42 Stat. 216).

4. Those rights for a right-of-way issued under the Federal Aid to Highway Act of November 9, 1921 to the State of California Grant Nos. LA-0160522 and RO-1722.

The patent shall be issued subject to:

1. Those rights for an oil and gas lease issued under the Mineral Leasing Act of February 25, 1920, as amended, to the Amoco Production Company Grant No. CA-9467.

2. All valid existing rights, including rights-of-way, locations, leases, permits, or other valid encumbrances.

DATES: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, California Desert District, Bureau of Land Management, in care of the following address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this action will become the final determination of the Department of the Interior. No transfer of public lands will occur sooner than 60 days from first publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James L. Williams, California Desert District, 1695 Spruce Street, Riverside, CA 92507, (714) 351-6402.

Additional detailed information relating to this action is available for public review at this office.

Date: March 13, 1989.

Gerald E. Hillier,

District Manager.

[FR Doc. 89-6833 Filed 3-22-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-09-4212-11; CA-15907]

Realty Action; Conveyance of Public Land for Recreation and Public Purposes in Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; classification of public lands for disposal for recreation and public purposes.

SUMMARY: The following described public land has been determined suitable for classification and for lease or conveyance pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et. seq.):

Mount Diablo Meridian, California

T. 29 S., R. 37 E.,
Sec. 21, lots 16.
T. 30 S., R. 37 E.,
Sec. 14, E½NW¼, NE¼, S½NE¼, N½SE¼, W½NE¼SW¼.

Containing 244.73 acres.

These lands are hereby classified suitable for disposal under the aforementioned Act. Upon publication of this notice in the **Federal Register**, the subject lands shall be segregated from all other forms of appropriation under the public land laws, including the general mining laws, but not the mineral leasing laws.

The following lands have been found unsuitable for classification under the aforementioned Act, and the application of the State of California requesting these lands is hereby denied, subject to rights of appeal as provided by regulation:

Mount Diablo Meridian, California

T. 30 S., R. 37 E.
Sec. 3, lot 1.

The state's application is rejected based upon the fact that the subject parcel is private land, not subject to application or to the jurisdiction of the Bureau.

SUPPLEMENTARY INFORMATION:

The State of California has requested the subject lands pursuant to the R&PP Act for additions to the existing Red

Rock State Park. Acquisition of these lands will facilitate management of the park and reduce conflicts with incompatable uses. Based upon experience with the State's past performance in management of the park and analysis of proposed future uses, direct patent without the initial lease and development stage is deemed in the public interest. Pursuant to the Act, the lands will be conveyed without monetary consideration.

The subject land is not required for any Federal project of program, and disposal is consistent with Bureau land use planning. The land is considered chiefly valuable for disposal under the Act, and such disposal is deemed to be in the public interest.

The lease/patent document shall be subject to the provisions of the Act and applicable regulations of the Secretary of the Interior, and to the following reservations to the United States:

1. All minerals.

2. A right-of-way thereon for ditches and canals constructed by authority of the United States; Act of August 30, 1890 (26 Stat 391; 43 U.S.C. 945).

3. Those rights for right-of-way issued under the Federal Air to Highway Act of November 9, 1921 to the State of California Grant Nos. LA–0135202, CA–8348 and S–032604.

4. A utility corridor right-of-way for an areas 1320' in width issued pursuant to section 507 of FLPMA the Act of 1976 granted to BLM Grant No. CA–23946 (the reservation exists along LADWP transmission line LA–088876).

The patent shall be issued subject to all valid existing rights, including rights-of-way, locations, leases, permits, or other valid encumbrances.

1. A right-of-way for power transmissionline use by the City of Los Angeles pursuant to the Act of October 10, 1949 Grant No. LA–088876.

2. Those rights for an oil and gas lease issued under the MLA of February 25, 1920, as amended, to the Amoco Production Company Grant No. CA–9467.

3. Those rights for an oil and gas lease issued under the MLA of February 25, 1920, as amended, to the Hunt Oil USA Inc. Grant No. CA–15759.

DATES: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, California Desert District, Bureau of Land Management, in care of the following address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this action will become the final determination of the Department of the Interior. No transfer of public lands will occur sooner than 60 days from first publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: James L. Williams, California Desert District, 1695 Spruce Street, Riverside, CA 92507, (714) 351–6402.

Additional detailed information relating to this action is available for public review at this office.

Date: March 13, 1989.

Gerald E. Hillier

District Manager.

[FR Doc. 89–6834 Filed 3–22–89; 8:45 am]

BILLING CODE 4310–40–M

[UT–040–09–4212–14]

Realty Action; Sale of Public Lands in Garfield County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) public land described as Salt Lake Meridian, Utah, T. 34 S., R. 5 W., section 34, W2SWSWNENW (containing 1.24 acres), is proposed for direct sale to Robert and Wanda Hale at the appraised fair market value of $500.00. The lands described are hereby segregated from all forms of appropriations under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATES: Comments will be accepted on or before May 8, 1989. The sale will be held no less than 60 days from the date of publication of this notice.

ADDRESS: Detailed information concerning the sale is available at the Kanab Area Office, 318 North First East, Kanab Utah 84741, (801) 644–2672. Comments should be sent to the same address. The sale will be held in the Kanab Area Office.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States a right-of-way for ditches or canals constructed by the Authority of the United States, Act of August 30, 1890, 26 Stat. 391. 43 U.S.C. 945.

3. Title transfer will be subject to valid existing rights.

Any comments received during the comment period will be evaluated and the State Director may vacate or modify this realty action. In the absence of any objections, this Realty Notice will become the final determination of the Department of the Interior.

Date: March 14, 1989.

Gordon R. Staker,

District Manager.

[FR Doc. 89–6835 Filed 3–22–89; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–010–09–4410–10]

Intent to Prepare the Caliente Resource Area Management Plan; Bakersfield District, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to CFR 1501.7 and 43 CFR 1610.2(c), notice is hereby given that the Caliente Resource Area, Bakersfield, California District will be combining and revising its two land use plans into a single Resource Management Plan (RMP). This RMP will apply to all public lands within the Resource Area, and an Environmental Impact Statement (EIS) will be prepared. In addition to managing public land, the Bureau also has certain mineral leasing and permitting responsibilities on large areas of Forest Service land and on military installations which are open to mineral leasing. These responsibilities will be carried out in accordance with the appropriate surface managing agency's land use plans, and only impacts of mineral leasing and development for these lands will be addressed in this Resource Management Plan/Environmental Impact Statement (RMP/EIS).

SUPPLEMENTARY INFORMATION: The Caliente Resource Area contains approximately 570,000 acres of public lands in Kern, Kings, San Luis Obispo, Santa Barbara, Tulare, and Ventura counties, as well as mineral leasing responsibilities on federal lands administered by the U.S. Forest Service and military installations in the above counties and parts of Inyo County. The Caliente Resource Area is located in central California, and ranges from the Pacific coastline to the crest of the Sierra Nevada mountain range. Land use plans were developed for the western portion of the Resource Area (Coast/Valley planning area) in 1984, and the east portion (South Sierra Foothills planning area) in 1983. An RMP/EIS

covering the entire Resource Area is needed to address new congressional policy, incorporate supplemental program guidance from the Bureau, respond to new resource demands and opportunities, and address new situations where monitoring has indicated that new decisions are needed.

It is anticipated that the following issues and management concerns will receive special emphasis in the RMP/EIS: oil and gas mineral leasing, exploration and development, access to public lands, recreational use, land ownership adjustments, wildlife resources, rare threatened and endangered species, and special resources and areas. The interdisciplinary team that will develop alternative plans and do the time impact analysis will include specialists representing the following disciplines: wildlife biology, botany, forestry science, range science, archaeology, recreation, hydrology, soil science, geology/minerals, oil and gas, and lands/realty.

Public workshops to determine the scope of the issues/concerns to be addressed in the RMP/EIS, and to provide the public with information on the planning process and schedule, will be held at six locations as follows:

Tuesday, April 4, 1989 6:30—8:30 p.m.

Tulare County Building Conference Rooms A & B, 2800 West Burrell, Visalia, California.

Wednesday, April 5, 1989 6:30—8:30 p.m.

Kern Valley High School, 3280 Erskine Creek Road, Lake Isabella, California.

Thursday, April 6, 1989 7:00—9:00 p.m.

Taft College, Administration 10, 29 Emmons Park Drive, Taft, California.

Tuesday, April 11, 1989 7:00—9:00 p.m.

Santa Barbara County Building, Room 17, 123 East Anapamu, Santa Barbara, California.

Wednesday, April 12, 1989 6:30—8:30 p.m.

Cuesta College, Social Science Building #6304, Highway 1, San Luis Obispo, California.

Thursday, April 13, 1989 7:00—9:00 p.m.

Federal Building, Room 207, 800 Truxtun Avenue, Bakersfield, California.

DATES: The resource management planning process is scheduled to be completed by November, 1991.

FOR FURTHER INFORMATION CONTACT: Glenn A. Carpenter, Area Manager, Bureau of Land Management, Caliente Resource Area, 4301 Rosedale Highway, Bakersfield, CA 93308, telephone 805–861–4236. Documents relevant to this planning effort are available for public review at the same address.

Date: March 9, 1989.

Glenn A. Carpenter,

Area Manager.

[FR Doc. 89–6937 Filed 3–22–89; 4:50 pm]

BILLING CODE 4310–40–M

[ID–943–09–4214–10; I–4874]

Termination of Proposed Withdrawal and Reservation of Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice of an application, serial number I–4874, for withdrawal and reservation of lands was published as **Federal Register** Document No. 72–5185 on page 6875 in the issue of April 5, 1972. The applicant's agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in CFR, Subpart 2091, such lands will be at 9:00 a.m. on May 8, 1989, relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

Boise Meridian.

T. 11 N., R. 3 E.
Sec. 3, lot 7;
Sec. 10, unsurveyed island lying in E½ SE¼;
Sec. 15, unsurveyed island lying in SE¼ SE¼, unsurveyed island lying in sections 14 and 15, unsurveyed island lying in section 15 and 22.

The area described contains 8.2 acres in Valley County.

Dated: March 16, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89–6836 Filed 3–22–89; 8:45 am]

BILLING CODE 4310–GG–M

[ID–943–09–4214–10; I–06544]

Termination of Proposed Withdrawal and Reservations of Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice of an application, serial umber I–06544, for withdrawal and reservation of lands was published as **Federal Register** Document No. 55–10240 on page 9869 in the issue of September 6, 1955. The applicant's agency has cancelled its application insofar as it involves the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will at 9:00 a.m., on April 24, 1989, be relieved of the segregative effect of the above-mentioned application. The enabling act for the River of No Return Wilderness affects the lands involved in this application in that the Act prohibits placer mining in the Middle Fork of the Salmon River and all of its tributaries in their entirety.

The lands involved in this notice of termination are:

Boise Meridian, Idaho

Boise National Forest

T. 12 N., R. 8 E.,
Sec. 3, lots 3, 4, S½NW¼, SW¼;
Sec. 10, W½.
T. 13 N., R. 8 E.,
Sec. 1, SW¼;
Sec. 11, NE¼;
Sec. 12, W½;
Sec. 13, W½NE¼, E½NW¼, SW¼;
Sec. 14, N½SE¼;
Sec. 24, W½;
Sec. 25, NW¼;
Sec. 26, N½, SW¼;
Sec. 34, S½;
Sec. 35, N½, N½S½;
Sec. 36, N½.
T. 12 N., R. 9 E.,
Sec. 3, lots 2, 3, 4, SW¼NE¼, W½SE¼, S½NW¼, SW¼;
Sec. 9, NE¼, S½;
Sec. 10, NW¼;
Sec. 16, NW¼;
Sec. 17, SE¼;
Sec. 20, NE¼, E½NW¼, SW¼, W½SE¼.
T. 13 N., R. 9 E.,
Sec. 25, S½;
Sec. 26, E½SW¼, SE¼;
Sec. 31, lots 1, 2, E½NW¼, NE¼;
Sec. 32, N½, SE¼;
Sec. 33, S½;
Sec. 34, N½, SW¼;
Sec. 35, NW¼NE¼, NW¼.
T. 13 N., R. 10 E., (unsurveyed),
Sec. 22, SE¼NE¼, S½;
Sec. 23, N½, N½SE¼;
Sec. 24, SW¼;
Sec. 25, NE¼, E½NW¼, E½SE¼;
Sec. 27, NW¼;
Sec. 28, S½NE¼; SW¼, W½SE¼;
Sec. 29, S½;
Sec. 30, S½;
Sec. 31, N½N½;

Challis National Forest

T. 12 N., R. 10E.,
Sec. 13, SE¼SE¼;
Sec. 24, NE¼, SW¼, N½SE¼.
T. 12 N., R. 11 E.,
Sec. 3, lots 1, 2, 3, 4, S½N½, SW¼;
Sec. 4, lots 1, 2, S½NE¼;
Sec. 9, SE¼;
Sec. 10, N½, W½SW¼, E½SE¼;
Sec. 11, SW¼NW¼, SW¼;
Sec. 13, lots 4 thru 9;
Sec. 14, W½NE¼, NW¼, SE¼;
Sec. 16, lots 2, 3, 4, W½NE¼, SE¼NW¼, E½SW¼, NW¼SE¼;

Sec. 24, lots 1, 2, E½NW¼, SE¼.
T. 13 N., R. 11 E., (unsurveyed)
Sec. 25, SE¼;
Sec. 28, W½SW¼;
Sec. 33, W½E½, NW¼, E½SW¼;
Sec. 34, SE¼;
Sec. 35, E½NE¼, SW¼, N½SE¼;
Sec. 36, W½NE¼, NW¼.
T. 12 N., R. 12 E., (unsurveyed)
Sec. 5, S½NE¼, SW¼, N½SE¼;
Sec. 6, SE¼SE¼;SE¼;
Sec. 7, NE¼, E½SW¼, W½SE¼;
Sec. 18, NW¼.
T. 13 N., R. 12 E. (unsurveyed)
Sec. 19, SE¼;
Sec. 20, S½N½, N½S½;
Sec. 21, S½;
Sec. 22, SE¼;
Sec. 28, N½NE¼;
Sec. 30, N½NE¼, NW¼.

The areas described aggregate approximately 17,161.30 acres in Boise, Custer and Valley Counties.

Dated: March 17, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89-6837 Filed 3-22-89; 8:45 am]

BILLING CODE 4310-GG-M

[NM-940-09-4214-11; NM NM 6844]

Proposed Continuation of Withdrawal; New Mexico; Correction

AGENCY: Bureau of Land Management, Interior.

AGENCY: Notice.

SUMMARY: This notice will correct the error in the acreage in a **Federal Register** notice dated July 25, 1988. The acreage in FR DOC. 88-17610, published on page 29393 in the issue of Thursday, August 4, 1988, is hereby corrected as follows:

Following the legal land description on page 29393, third column, line 1, which reads "The areas described aggregate 78.27 acres" is hereby corrected to read "The areas described aggregate 124.68 acres."

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, (505) 988-6071.

Norman P. Duquette,

Acting State Director.

[FR Doc. 89-6839 Filed 3-22-89; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held at 8:00 p.m. (PDT) on Tuesday, April 25, 1989, at the San Mateo City Council Chambers, San Mateo City Hall, San Mateo, California.

The Advisory Commission was established by Pub. L. 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows: Mr. Frank Boerger, Chairman; Ms. Amy Meyer, Vice Chair; Mr. Ernest Ayala; Mr. Richard Bartke; Dr. Howard Cogswell; Brig. Gen. John Crowley, USA (ret); Mr. Margot Patterson Doss; Mr. Neil D. Eisenberg; Mr. Jerry Friedman; Mr. Steve Jeong; Ms. Daphne Greene; Ms. Gimmy Park Li; Mr. Gary Pinkston; Mr. Merritt Robinson; Mr. R. H. Sciaroni; Mr. John J. Spring; Dr. Edgar Wayburn; Mr. Joseph Williams.

The main agenda item at this public meeting will be a briefing on issues relating to the Scenic and Recreational Easement of the Golden Gate National Recreation Area on the San Francisco Watershed lands signed between the City and County of San Francisco and the National Park Service on January 15, 1969.

The Scenic and Recreation Easement was made the administrative responsibility of the Golden Gate National Recreation Area by Pub. L. 96-607 in December 19809. Both the founding legislation for the Golden Gate National Recreation Area and the Scenic and Recreation Easement emphasize preservation of the land, and the natural resources found there, in a natural condition.

Under provisions of the Easement, the approval of a representative of the Secretary of the Interior is required before certain actions can take place within the San Francisco Watershed, and consultation is required on certain other actions. The Scenic and Recreational Easement was granted to the federal government to protect the resources of the San Francisco Watershed in San Mateo County.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the aforementioned public meeting. Those not wishing to appear in person may submit written statements to the General Superintendent of the Golden Gate National Recreation Area on these items. Statements will be accepted until May 26, 1989.

The meeting is open to the public. Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123, telephone (415) 556-4484.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after May 19, 1989. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Date: March 17, 1989.

W. Lowell White,

Regional Director, Western Region.

[FR Doc. 89-6914 Filed 3-22-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Issuance of Limited Exclusion Order and Cease and Desist Orders

AGENCY: U.S International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has issued a limited exclusion order in the above-captioned investigation prohibiting the unlicensed importation of certain erasable programmable read only memories (EPROMs) manufactured abroad by Hyundai Electronics Industries Co., Ltd. as a contractor for General Instrument Corporation and/or Microchip Technology, Inc., whether in the form of single-unit packages, incorporated into a carrier of any form mounted on a circuit board of any configuration, or contained in certain products except for EPROMs which are the subject of a consent order issued by the Commission on August 25, 1988. In addition, the order prohibits the unlicensed importation of certain EPROMs manufactured abroad for Atmel Corporation, whether in the form of a single-unit packages, incorporated into a carrier of any form, mounted on a circuit board of any configuration. In addition, the Commission has issued cease and desist orders to General Instrument Corporation, Microchip Technology, Inc., Atmel Corporation,

Cypress Electronics, Inc., All-American Semiconductor, Inc., and Pacesetter Electronics, Inc., ordering them to cease and desist from the following activities: importing, selling for importation, assembling, testing, performing manufacturing steps with respect to, using, marketing, distributing, offering for sale, or selling, EPROMs which have been determined to be infringing. The orders apply to any of the affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns, of the above-named companies.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C 1337) and in §§ 210.56 and 210.58 of the Commission's Interim Rules of Practice and Procedure (53 U.S.C. 33071–33072, Aug. 29, 1988).

The Commission instituted this investigation on September 16, 1987, in response to a complaint filed on August 5, 1987, by Intel Corporation (Intel) of Santa Clara, California. A supplement to the complaint was filed on September 2, 1987. Amendments to the complaint were filed on October 13, 1987, January 12, 1988, March 3, 1988, and September 16, 1988. Intel originally complained of unfair acts and unfair methods of competition in the importation and sale of certain EPROMs and products containing same, by reason of alleged direct and induced infringment of six U.S. product patents, and the manufacture abroad of the subject EPROMs in accordance with a process which, if practiced in the United States, would infringe claims of two U.S. process patents. The complaint further alleged that the tendency of the unfair methods of competition and unfair acts is to destroy or substantally injure an industry, efficiently and economically operated, in the United States. The complaint, and the Commission's original notice of investigation, named seven respondents allegedly engaged in the manufacture, importation, and sale of allegedly infringing EPROMs.

On September 16, 1988, following enactment of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418 (Aug. 23, 1988), Intel moved to amend the complaint and notice of investigation to, *inter alia*, delete the allegation of tendency to substantially injure the domestic industry, and the allegation of efficient and economic operation. The presiding administrative law judge (ALJ) granted Intel's motion and issued an ID (Order No. 137) amending the complaint and notice of investigation. The Commission denied two respondents' petitions for review of the ID, but determined to review the ID on its own motion and modified the ID in order to incorporate the claims of the patents remaining in controversy, which were omitted from the amended notice of investigation as set forth in the ID. 53 FR 45399 (Nov. 9, 1988).

On November 16, 1988, the ALJ issued her final initial determination (ID), finding that there is a violation of section 337 in the importation of certain EPROMs or the manufacture of certain EPROMs for importation. On January 3, 1989, the Commission ordered review of certain portions of the final ID, and requested written submissions regarding certain specific questions raised by the issues under review. The Commission determined not to review the remainder of the ID, which thereby became the determination of the Commission. The Commission also requested written submissions concerning the questions of remedy, the public interest, and bonding. 54 FR 1011 (Jan. 11, 1989). Having considered the record in this investigation, including the written submissions of the parties and comments from members of the public, the Commission made its determinations disposing of the issues on review, and the questions of remedy, the public interest, and bonding.

Notice of this investigation was published in the **Federal Register** September 16, 1987 (52 FR 35004).

Copies of the Commission's Orders, the nonconfidential versions of opinions issued herewith, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Issued: March 16, 1989.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–6816 Filed 3–22–89; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31413]

Itel Corporation et al.; Transfer of Control Exemption

Itel Corporation (Itel), a noncarrier, and its direct and wholly owned subsidiaries discussed below have filed a notice of exemption for the transfer of control of Itel's rail carrier subsidiaries within the corporate family. The restructuring is for the purpose of consolidating Itel's car leasing business.

The former Itel Rail Corporation, a wholly owned subsidary of Itel, has been renamed Itel Rail Holdings Corporation (Itel Rail Holdings). Prior to the initial restructing, it directly or indirectly controlled five Class III rail carriers, Hartford & Slocomb Railroad Company, McCloud River Railroad Company, Green Bay & Western Railroad Company (GB&W), Ahnapee & Western Railway Company (A&W) (a subsidary of GB&W), The Ferdinand and Huntingburg Railroad Company (F&H) (a subsidiary of Itel Railcar Corporation), and one recently-created carrier, FRVR Corporation, which will be a Class II or Class III rail carrier, depending upon the results of its operations.

The intitial phase of the restructuring occurred on February 2, 1989, and created the following new non-carrier subsidiaries. Itel HG, Inc. has become a wholly owned sibsidiary of Itel Rail Holdings and in turn wholly owns Signal Capital Holdings Corporation (Signal Capital). Pullman Leasing Company (Pullman) is now a wholly owned subsidiary of Signal Capital and in turn wholly a newly formed Itel Rail Corporation. Itel Railcar Corporation (Itel Railcar) is now a wholly owned subsidiary of the new Itel Rail Corporation, with F&H continuing as subsidiary of Itel Railcar.

The second phase of the restructuring, which will not occur until such time as this notice becomes effective involves the transfer of the stock of Itel's remaining regulated carrier subsidiaries first to Pullman and then to Pullman's direct subsidiary, Itel Rail Corporation. (The A&W will continue to be a subsidiary of the GB&W). After the restructuring is completed, four new noncarrier subsidiaries will be interposed between Itel Rail Holdings and the carrier subsidiaries.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels,

significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The proposed transaction is intended to effect operating efficiencies.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing or a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on:

Thomas J. Byrne, Carl V. Lyon, Itel Corporation, 1101 30th Street, NW., Suite 302, Washington, DC 2007.

John M. Nannes, Robert A. Potter, Skadden, Arps, Slate, Meagher & Flom, 1440 New York Avenue, NW., Washington, DC 20005.

Decided: March 16, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-6799 Filed 3-22-89; 8:45 am]

BILLING CODE 7035-01-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Civil Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee Federal Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a three-day meeting of the Judicial Conference Advisory Committee on Civil Rules to consider proposed amendments to the Federal Rules of Civil Procedure pursuant to section 331 of Title 28, United States Code. The meeting will be open to public observation.

DATE: The meeting will be held on April 27, 28, and 29, 1989, beginning at 9:00 a.m. and ending at approximately 5:00 p.m. each day.

ADDRESS: The meeting will be held in the Stiha Room at the LaFonda On The Plaza Hotel, 100 E. San Francisco Street, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633-6021.

Dated: March 14, 1989.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89-6920 Filed 3-22-89; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act, Alpha Resins Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 8, 1989 a proposed consent decree in *United States* v. *Alpha Resins Corporation*, Civil Action No. 89-321-Civ.-T13B was lodged with the United States District Court for the Southern District of Florida. The complaint filed by the United States alleged that defendant Alpha Resins Corporation is the owner and operator of the Alpha Resins Site ("the facility") in Polk County, Florida; that there have been releases of hazardous substances into the environment from the facility, which releases have caused the United States to incur response costs; and that there is or may be an imminent and substantial endangerment to the public health, welfare, or the environment because of the actual or threatened releases. The Complaint sought injunctive relief to require the defendant to abate and remedy the imminent and substantial endangerment and the effects of the actual or threatened releases from the facility. The Complaint further sought the reimbursement of past costs which were incurred by the United States in responding to the actual or threatened releases. The consent decree requires the defendants to implement fully the remedy selected by the Environmental Protection Agency as set forth in the Record of Decision, dated May 18, 1988.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Alpha Resins Corporation*, D.J. Ref. 90-11-2-371.

A copy of the proposed consent decree may be examined at the office of the United States Attorney, Middle District of Florida, 500 Zack Street, Suite 400, Tampa, Florida, 33602, at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, NW., Atlanta, Georgia 30365; and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the Department of Justice at the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. When requesting a copy, please refer to *United States* v. *Alpha Resins Corporation*, D.J. Ref. 90-11-2-371, and enclose a check in the amount of $38.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-6851 Filed 3-22-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Proposed Termination of Final Judgment; Florist's Telegraph Delivery Association and Florist's Transworld Delivery Association

Notice is hereby given that Florist's Transworld Delivery Association ("FTD"), has filed a motion in the United States District Court for the Eastern District of Michigan to terminate the Final Judgments entered against it in *United States* v. *Florist's Telegraph Delivery Association*, Civil No. 15748, and in *United States* v. *Florist's Transworld Delivery Association*, Civil No. 28784. The Department of Justice ("Department"), in a stipulation also filed with the court has consented to the termination of the judgments, but has reserved the right to withdraw its consent pending receipt of public comments.

The complaints in these cases (filed on June 1, 1956 and August 1, 1966) alleged that FTD restrained trade in the flowers-by-wire market. The Final Judgments (entered by consent on June 1, 1956 and March 24, 1969), among other things, enjoined FTD from (1) imposing exclusive membership restrictions upon its members; (2) fixing prices of wire service charges; (3) expelling members or denying membership to applicants without written notice; (4) preventing a member from engaging in any lawful business other than the retail florist

business; (5) preventing a member from being listed in a directory of retail florists published by someone other than FTD or from advertising in any other medium; or (6) restricting the location of the place of business for members or applicants.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgments would serve the public interest. Copies of the complaints and Final Judgments, FTD's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202–633–2481), and at the Office of the Clerk of the United States District Court for the Eastern District of Michigan, 120 Federal Building, 231 W. Lafayette Street, Detroit, Michigan 48226. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the judgments to the Department. Such comments must be received within the sixty (60) day period established by court order, and will be filed with the court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, Department of Justice, 555 Fourth Street, NW., Room 10–102, Washington, DC 20001 (telephone 202–724–6694).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 89–6852 Filed 3–22–89; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

[INS No: 1141–89]

Direct Mail Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of change of address for several offices that receive applications under the Direct Mail Program, and clarification of which applications and petitions are included in the program.

SUMMARY: Under the Direct Mail Program the public mails certain applications and petitions directly to an INS Regional Service Center. The last expansion of the Program was announced in **Federal Register** notice, 54 FR 861, dated Tuesday, January 10, 1989, which was corrected at 54 FR 3557 on Tuesday, January 24, 1989. This new notice updates the addresses of several of the INS Regional Service Centers. It also clarifies what applications are included in the program.

DATES: March 23, 1989.

FOR FURTHER INFORMATION CONTACT: Michael L. Aytes, Senior Examiner, Immigration and Naturalization Service, Adjudications Division, 425 I Street NW., Room 7122, Washington, DC 20536. Telephone (202) 633–3946.

SUPPLEMENTARY INFORMATION: As indicated in the January 10, 1989 **Federal Register** notice document, the "Application to Change Nonimmigrant Status" filed on Form I–506, is included in the Direct Mail Program in all four Service Regions at this time, *but* only if filed with a "Petition for Temporary Worker" or a "Petition for Intracompany Transferee" filed on Form I–129B, I–129H or I–129L. All other I–506 applications should be filed at the appropriate local INS office.

In addition, the I–129F petition is titled "Petition for Fiance(e)", not "Petition for Finance(E)" which was printed in the January 10, 1989 notice document.

Addresses:

The jurisdictions of the Service's four Regional Service Centers remain the same as previously published. However, the addresses of the Service Centers for the Eastern, Southern and Western Regions have recently changed. For convenience the addresses of all four service centers are reprinted below:

Eastern—all mail

INS Regional Service Center, 1A Lemnah Drive, St. Albans, VT. 05479–0001.

Northern—all mail

INS Regional Service Center, Federal Bldg. & U.S. Courthouse, 100 Centennial Mall North, room B26, Lincoln, NE 65808–1619.

Southern—Normal Mailing Address

INS Regional Service Center, P.O. Box 568808, Dallas, TX 75356–8808.

Overnight Delivery Address

INS Regional Service Center, 311 N. Stemmons Freeway, Dallas, TX 75207.

Western—Normal Mailing Address for I–751 and I–752 Applications

INS Regional Service Center, P.O. Box 30112, Laguna Nigel, CA 92677–8112.

Normal Mailing Address for All But I–751 and I–752

INS Regional Service Center, P.O. Box 30111, Laguna Nigel, CA 92677–8111.

Overnight Delivery Address

INS Regional Service Center, 24401 Calle De La Louisa, Laguna Hills, CA 92653.

Dated: March 8, 1989.

Richard E. Norton,

Associate Commissioner.

[FR Doc. 89–6985 Filed 3–22–89; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before May 8, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency

no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Army and Air Force Exchange Service (N1–334–89–1). Training, customer relation and other videos and video production and footage files. (Historically valuable master videos are proposed for permanent retention.)

2. Environmental Protection Agency, Toxic Releases Inventory System (N1–412–88–3). Paper copies of Superfund Amendment Reauthorization Act (SARA) Form R submissions.

3. Internal Revenue Service, Records Control Schedule 202, Office of the Assistant Regional Commissioner (Examination) and Examination Division, district offices and subordinate field offices (N1–58–88–4). Routine housekeeping records.

4. Department of Labor, Bureau of Labor Statistics (N1–257–88–1). Comprehensive schedule for the records of the Office of the Commissioner and seven other administrative offices.

5. Department of Labor, Bureau of Labor Statistics (N1–257–88–5). Routine correspondence of the Commissioner's office, reprints, and extra copies of publications.

6. National Advisory Council on Women's Educational Programs (N1–220–89–1). Miscellaneous instructional and teacher training materials not required to document the work of the Council.

7. National Mediation Board (N1–13–88–1). Comprehensive records schedule.

Dated: March 15, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–6877 Filed 3–22–89; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Earth Science Advisory Committee; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Earth Sciences.

Date: April 10, 11 and 12, 1989.

Time: 9:00 a.m. to 5:30 p.m. April 10, 8:30 a.m. to 5:00 p.m. April 11, 8:30 a.m. to 4:30 p.m. April 12.

Place: The National Science Foundation, Room 543, 1800 G. Street, NW., Washington, DC 20550.

Type of Meeting:

Open—April 11—8:30 a.m. to 5:00 p.m.
April 12—8:30 a.m. to 4:30 p.m.
Closed—April 10—9:00 a.m. to 5:30 p.m.

Contact Person: Dr. James Hays, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550 Telephone: (202) 357–9591.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research and research-related activities in the Earth Sciences.

Agenda:

Closed—Oversight review of the Crustal Structure and Tectonics and Petrogenesis and Mineral Resources Programs, including examination of proposals, reviewer comments, and other privileged material.

Open—Discussion of Earth Sciences' (EAR) budgets, responses to previous oversight reports, Chandler Continental Lithosphere Workshop, cross-directorate programs, educational issues in Earth Sciences (especially pre-college activities), the Crustal Structure and Tectonics Program, the Petrogenesis and Mineral Resources Program, and general discussion.

Reason for Closing: The Committee will be reviewing grant and declination jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This session will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

March 20, 1989.

[FR Doc. 89–6879 Filed 3–22–89; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Industrial Science and Technological Innovation; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Committee for Industrial Science and Technological Innovation.

Date and Time: April 12–13 1989; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW. Room 523, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Ms. Carolyn J. Smith, Administrative Officer, Division of Industrial Science and Technological Innovation, Room 1250, National Science Foundation, Washington, DC 20550 (202) 357–9666.

Summary of Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide review advice and recommendations concerning support of research programs administered in the Division.

Agenda:

April 12, 1989; 8:30 a.m.–12:00 noon.
Review & discussion of current ISTI activities.
Briefing on Director's program review.
Discussion of GAO Federal Small Business report.
Discussion of CUIR/Technology Transfer reports.
12:00–1:30 p.m. Lunch.
1:30 p.m.–5:00 p.m.
Presentation of industrial review panel operations.
Advisory Committee options for program oversight.
Discussion of Advisory Committee relative to the Small Business Development Act.
Advisory Committee open discussion of ISTI activities.
April 13, 1989; 8:30 a.m.–12:00 noon.
Review of ISTI budget, operations and Long Range Plans.

Committee discussions of Long Range Planning options.

M. Rebecca Winkler,

Committee Management Office.

March 20, 1989.

[FR Doc. 89-6880 Filed 3-22-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: New.

2. The title of the information collection: Emergency Response Data System Implementation.

3. The form number if applicable: Not applicable.

4. How often the collection is required: One-time.

5. Who will be required or asked to report: NRC power reactor licensees.

6. An estimate of the number of responses: 112

7. An estimate of the total number of hours needed to complete requirement or request: 3,583; 32 hours per response.

8. An indication of whether section 350(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: The proposed implementation of an Emergency Response Data System, which would provide nuclear power plant data to the NRC during an emergency, necessitates the NRC obtaining information on the design of emergency data systems used by NRC power reactor licensees.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Comments and questions should be directed by mail to the OMB reviewer, Nicolas B. Garcia, Paperwork Reduction Project (3150-0000), Office of Management and Budget, Washington, DC 20503. Comments can also be communicated by telephone at (202) 395-3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated in Bethesda, Maryland, this 16th day of March, 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89-6900 Filed 3-22-89; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of Submission, new, revision, or extension: Extension.

2. Title of the information collection: Request for Access Authorization.

3. The form number if applicable: NRC Form 237.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: NRC contractors, subcontractors, licensees, or other individuals who request NRC access authorizations.

6. An estimate of the number of responses: 790.

7. An estimate of the total number of hours needed to complete the requirement or request: 12 minutes per response, 158 Hours Annually.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC Form 237 is executed by licensees, NRC contractors, subcontractors, or other individuals who require an NRC access authorization. Information is required to ensure that an adequate access authorization is granted to handle NRC classified information and/or special nuclear material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Comments and questions should be directed by mail to the OMB reviewer, Nicolas B. Garcia, Paperwork Reduction Project (3150-0050), Office of Management and Budget, Washington, DC 20503. Comments can also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland this 16th day of March, 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior, Official for Information Resources Management.

[FR Doc. 89-6901 Filed 3-22-89; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of Submission, new, revision, or extension: Extension.

2. Title of the information collection: Request For Visit Or Access Approval.

3. The form number if applicable: NRC Form 277.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Licensee and contractor employees who hold an NRC access authorization and need to make a visit to NRC, other contractor/licensee or government agencies in which access to classified information will be involved or unescorted access is desired.

6. An estimate of the number of responses: 30.

7. An estimate of the total number of hours needed to complete the requirement or request: 10 minutes per response, 5 Hours Annually for the reporting and 5 Hours for recordkeeping.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC Form 277 data provides assurance that only properly cleared authorized individuals, who require access to classified information as part of their official employment duties, will have access during visits to NRC, other contractor or licensee facilities or government agencies.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Comments and questions should be directed by mail to the OMB reviewer, Nicolas B. Garcia, Paperwork Reduction Project (3150–0051), Office of Management and Budget, Washington, DC 20503. Comments can also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland this 15th day of March 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–6902 Filed 3–22–89; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: New.

2. The title of the information collection: Medical Quality Assurance Assessment.

3. The form number if applicable: Not Applicable.

4. How often the collection is required: The assessment will be conducted one time for each medical licensee.

5. who will be required or asked to report: Persons holding NRC licenses under 10 CFR Part 35 for the medical use of byproduct material.

6. An estimate of the number of responses: An average of 602 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: Approximately two hours per response, for an average annual industry total of 1204 hours.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: As part of an effort to modify the regulatory framework concerning medical quality assurance, the NRC plans to conduct a one-time assessment of QA programs and procedures at all NRC medical licensees' facilities. The assessment, to be conducted through a questionnaire that will be completed by NRC inspectors during inspections of medical licensees, will provide specific information on the QA programs and procedures that are in use at licensees' medical institutions. Results of the assessment will guide NRC's QA rulemaking effort by providing information about QA practices which should be addressed in NRC regulations.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150–), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 16th day of March 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–6897 Filed 3–22–89; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Record Keeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: Qualifications Investigation, Clerical/Secretarial.

3. The form number if applicable: NRC Form 212A

4. How often the collection is required: Whenever NRC Office of Personnel specialists determine qualification investigations are required in conjunction with applications for employment related to vacancies.

5. Who will be required or asked to report: Supervisors, former supervisors, and/or other references of external applicants.

6. An estimate of the number of responses: 1,500 annually.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 375 hours annually, 15 minutes per response.

8. Section 3504(h), Pub. L. 96–511 does not apply.

9. Abstract: Information requested on NRC Form 212A is used to determine the qualifications and suitability of external applicants for employment in clerical/secretarial positions with the NRC. The completed form may be used to examine, rate and/or assess the prospective employee's qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel of the Office of Personnel, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions should be directed by mail to the OMB reviewer as follows: Nicolas B. Garcia, Paperwork Reduction Project (3150–0034), Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084.

NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 16th day of March 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–6898 Filed 3–22–89; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Record Keeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management

and Budget (OMB) for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: Qualifications Investigation, Professional.

3. The form number if applicable: NRC Form 212.

4. How often the collection is required: Whenever NRC Office of Personnel specialists determine qualification investigations are required in conjunction with applications for employment related to vacancies.

5. Who will be required or asked to report: Supervisors, former supervisors, and/or other references of external applicants.

6. An estimate of the number of reponses: 1,500 annually.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 375 hours annually, 15 minutes per response.

8. Section 3504(h), Pub. L. 96–511 does not apply.

9. Abstract: Information requested on NRC Form 212 is used to determine the qualifications and suitability of external applicants for employment in professional positions with the NRC. The completed form may be used to examine, rate and/or assess the prospective employee's qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel of the Office of Personnel, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer as follows: Nicolas B. Garcia, Paperwork Reduction Project (3150–0033), Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland this 16th day of March 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior, Official for Information Resources Management.

[FR Doc. 89–6899 Filed 3–22–89; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–275 and 50–323]

Pacific Gas and Electric Co.; Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–80 and DPR–82, issued to Pacific Gas and Electric Company (the licensee), for operation of the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, respectively, located in San Luis Obispo County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the Technical Specifications (TS) by revising the steam generator low and low-low level setpoints for initiating a reactor trip. Specifically, the proposed amendments would change the DCNPP combined Technical Specifications by revising TS 2.2.1, "Reactor Trip System Instrumentation Setpoints," Table 2.2–1, "Reactor Trip System Instrumentation Trip Setpoints," Items 13 and 14. These Items would be modified to reduce the steam generator water level low and low-low setpoints from 15 percent to 7.2 percent, as indicated by the narrow range instrument. Also, the associated TS bases would be changed accordingly.

The proposed action is in accordance with the licensee's application amendments dated April 18, 1988.

The Need for Proposed Action

The proposed revision to the TS is required to decrease the number of unnecessary reactor trips caused by (1) steam generator water level low-low and (2) steam generator water level low, coincident with steam/feedwater flow mismatch. This will reduce the number of challenges to the reactor protection systems and impose fewer thermal transients on the plants.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The evaluation shows that the proposed revision (1) does not increase the probability or consequences of accidents, (2) does not result in a change in the types or amounts of any effluents that may be released offsite, and (3) does not result in a significant increase in the individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed revision to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 23, 1988 (53 FR 23708). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would result in unnecessary reactor trips, thereby increasing the number of challenges to the reactor protection systems and imposing more thermal transients on the plants.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the Diablo Canyon Nuclear Power Plant dated May 1973, and its Addendum, dated May 1976.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a

significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated April 18, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 15th day of March 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 89-6904 Filed 3-22-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b.of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 6-8, 1989, in Room P-110, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the Federal Register on February 22, 1989.

Thursday, April 6, 1989

8:30 a.m.-8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.-10:15 a.m.: Embrittlement of Reactor Pressure Vessel Supports (Open)—The Committee will review and comment on proposed resolution (ORNL/TM-10966) of embrittlement of reactor pressure vessel supports by neutron flux.

10:30 a.m.-12:00 Noon: Thermal Hydraulic Program for B&W Once-Through Steam Generators (Open)—A briefing will be held regarding the status of the NRC-industry program regarding thermal hydraulic phenomena in B&W once-through steam generators.

1:00 p.m.-2:00 p.m.: Meeting with Director, NRC Office of Nuclear Reactor Regulation (Open)—A discussion will be held regarding items of mutual interest, including activities regarding reactor containment design requirements.

2:00 p.m.-2:30 p.m.: NRC Pressurized Thermal Shock Rule (Open)—The Committee will review and comment on proposed amendment to the NRC pressurized thermal shock rule.

2:45 p.m.-3:15 p.m.: Generic Issue 101, BWR, Water Level Redundancy (Open)—The Committee will review and comment on proposed resolution of this generic issue.

3:15 p.m.-3:45 p.m.: Future Activities (Open)—The Committee will discuss anticipated subcommittee and full Committee activities.

3:45 p.m.-4:15 p.m.: ACRS Subcommittee Activities (Open)—The cognizant ACRS subcommittee chairman or designated members will report on the status of assigned activities, including consideration of pipe degradation in nuclear power plants.

4:15 p.m.-5:15 p.m.: ACRS Responsibilities (Open)—The Committee will discuss proposed ACRS comments/report regarding the scope of ACRS responsibilities.

5:15 p.m.-5:30 p.m.: Appointment of ACRS Members (Closed)—The Committee will discuss the status of appointment of ACRS members.

This session will be closed as appropriate to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

5:30 p.m.-6:00 p.m.: Generic Issue 103 (Open)—The Committee will review and comment on the proposed resolution of Generic Issue 103, design for probable maximum precipitation.

Friday, April 7, 1989

8:30 a.m.-12:00 Noon: Nuclear Power Plant Maintenance Requirements (Open)—The ACRS will review and report on proposed NRC rule and regulatory guide regarding maintenance requirements at nuclear power plants.

1:00 p.m.-2:15 p.m.: Emergency Response Data System (Open)—A briefing and discussion will be held of proposed NRC generic letter regarding emergency data systems at nuclear power plants.

2:15 p.m.-3:00 p.m.: Performance Indicators (Open)—A briefing will be held regarding status of performance indicators for nuclear power plant operations.

3:15 p.m.-4:15 p.m.: Generic Issue 115, Enhancement of Reliability of Westinghouse Solid State Protection Systems (Open/Closed)—The Committee will review and comment on proposed resolution of this generic issue.

Portions of this session may be closed as appropriate to discuss Proprietary Information regarding this matter.

4:15 p.m.-6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports to NRC regarding items considered during this meeting.

Saturday, April 8, 1989

8:30 a.m.-12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will complete discussion of proposed reports to the NRC regarding items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and to discuss Proprietary Information applicable to the material being considered (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 8:15 a.m. and 5:00 p.m.

Date: March 20, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-6893 Filed 3-22-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on April 11–12, 1989, EPRI Conference Center, 3412 Hillview Avenue, Palo Alto, CA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, April 11, 1989—8:30 a.m. until the conclusion of business.

Wednesday, April 12, 1989—8:30 a.m. until the conclusion of business.

The Subcommittee will review Chapters 1–5 and preview Chapters 6–9 of the EPRI ALWR Requirements Document.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 301/492–7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: March 17, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–6894 Filed 3–22–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–331]

Iowa Electric Power Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to the Iowa Electric Power Company, the Central Iowa Power Cooperative, and the Corn Belt Power Cooperative for operation of the Duane Arnold Energy Center (DAEC) located in Linn County, Iowa.

The amendment would modify the Specifications issued as part of the Radiological Effluent Technical Specifications (RETS). The proposed modifications are administrative in nature and incorporate clarifications as well as typographical corrections to improve format consistency with the rest of the DAEC TS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided below.

The Commission has provided guidance for the application of criteria for no significant hazards determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). The examples include: (i) A purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature. The proposed modifications fall within the scope of example (i) because they are administrative and do not remove or relax any existing requirements. Since the application for the amendment involves proposed modifications that are encompassed by an example of an action not likely to involve a significant hazards consideration, the staff has made the proposed determination that the amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 24, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325–6000 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 24, 1987, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 17th day of March 1989.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulations.

[FR Doc. 89–6903 Filed 3–22–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–05980 et al. and Lic. No. 37–0030–02 et al.]

Safety Light Corp.; Order Modifying Licenses and Demand for Information

In the matter of Safety Light Corporation, et al United States Radium Corporation, USR Industries, Inc.; USR Lighting, Inc.; USR Chemical, Inc., USR Metals, Inc., USR Natural Resources, Inc., Lime Ridge Industries, Inc., Metreal, Inc., Pinnacle Petroleum, Inc. and all other successor corporations to either USR Industries or U.S. Radium Corp. (herein referred to as the Corporations); [Docket Nos. 030–05980, License Nos. 37–00030–02, et al; EA 89–29]

I

Safety Light Corporation (Safety Light) is the named licensee on Byproduct Material License Nos. 37–00030–02, 37–00030–08, 37–00030–07E, 37–00030–09G, and 37–00030–10G, issued by the Nuclear Regulatory Commission (NRC).

License No. 37–00030–02 authorizes the possession, storage, and use of any byproduct material for purposes of decontamination, cleanup, and disposal of equipment and facilities previously used for manufacturing, research and development in operations performed at the facility located at 4150–A Old Berwick Rd., Bloomsburg, PA (the Bloomsburg facility). License No. 37–00030–02 was originally issued on June 20, 1956 and was last renewed on January 25, 1979. This license has been under timely renewal since February 29, 1984.

License No. 37–00030–08 authorizes the licensee to conduct research and development and to manufacture various devices containing tritium. License No. 37–00030–08 was originally issued on August 5, 1969, and was last

renewed on January 6, 1983. This license has been under timely renewal since December 31, 1987. The above licenses permit use of material only at facilities at 4150–A Old Berwick Road, Bloomsburg, Pennsylvania (the Bloomsburg facility).

License No. 37–00030–07E authorizes the distribution of timepieces, hands and dials to which luminous paint containing tritium is applied, to persons exempt from NRC licensing pursuant to 10 CFR 30.15. License No. 37–00030–07E was originally issued on April 16, 1965 and was last renewed on May 27, 1986. This license expires on April 30, 1991.

License No. 37–00030–09G authorizes the distribution of luminous devices containing tritium to persons generally licensed pursuant to 10 CFR 31.5. License No. 37–00030–09G was originally issued on January 13, 1966 and was last renewed on October 24, 1983. This license has been under timely renewal since October 31, 1988.

License No. 37–00030–10G authorizes the distribution of sealed self-luminous sources to persons generally licensed pursuant to 10 CFR 31.7. License No. 37–00030–10G was originally issued on December 13, 1971 and was last renewed on April 22, 1985. This license expires on April 30, 1990.

II

On January 21, 1981, the NRC received notification that the NRC licensee known as United States Radium Corporation (U.S. Radium), the prior licensee on all of the above licenses, had changed its name to Safety Light Corporation.

There was no indication at that time that the change involved any ownership or organizational changes. Consequently, routine administrative license amendments changing the corporate name from U.S. Radium Corporation to Safety Light Corporation were issued on March 31, 1982 to modify License No. 37–00030–08; and on January 20, 1983 to modify License Nos. 37–00030–02, 37–00030–07E, 37–00030–09G, and 37–00030–10G.

III

As early as 1983, the NRC sought clarification from Safety Light concerning corporate transactions that potentially could affect cleanup responsibility. Specifically, the letter that transmitted NRC Inspection Report 83–01, dated September 22, 1983, sought clarification, based upon inspections at the Bloomsburg facility, of the effects of an apparent corporate transfer of licensed activity. Safety Light's November 11, 1983 response to the request in the September 22, 1983 letter appears both incomplete and misleading in that it is silent on the details of the May 16, 1980 Agreement and Plan of Merger between U.S. Radium Corporation and USR Industries, Inc. and a July 11, 1980 U.S. Radium letter to its stockholders ("the 1980 Plan"). In its response, Safety Light refers back to the administrative name change processed in response to its January 21, 1981 submittal and affirmatively states that there were no organizational changes made due to the name change.

Since that time, the NRC has obtained and reviewed the 1980 plan. Based upon a review of the 1980 Plan, it now appears U.S. Radium merged with USR Industries, Inc. (Industries). It specifically appears that the former NRC licensee known as U.S. Radium Corporation, through its officers and directors, had also created the new corporation, known as USR Industries, Inc. After merging with Industries, the former U.S. Radium became a wholly-owned subsidiary of Industries, and then changed the name of the segregated NRC activities to Safety Light Corporation. Industries also transferred all its non-licensed assets and business to five other newly created corporations (USR Lighting, Inc.; USR Chemicals, Inc.; USR Metals, Inc.; Metreal, Inc.; and USR Natural Resources, Inc.), then wholly owned subsidiaries of USR Industries. Pinnacle Petroleum, Inc. is apparently another subsidiary of Industries. Thereafter, Safety Light Corporation, which had the activities authorized by NRC, was sold to Lime Ridge Industries, Incorporated, a corporation created by former employees of Industries and U.S. Radium.

IV

Neither prior notice to the NRC was given, nor NRC approval obtained, regarding the 1980 restructuring and subsequent sale or the full circumstances of the transfer of the NRC license, in violation of section 184 of the Atomic Energy Act and 10 CFR 30.34(b), which prohibit the transfer of a license, either directly or indirectly, unless the NRC, after securing full information, gives its consent in writing. It further appears from the 1980 Plan that these corporate transactions were a deliberate attempt to isolate the liability and responsibility for cleanup of the Bloomsburg facility (discussed below) from other, presumably more profitable, aspects of U.S. Radium's, and later Industries', business ventures.

Neither U.S. Radium, USR Industries, nor any of their successor corporations or subsidiaries can avoid responsibility and liability for the cleanup of the Bloomsburg facility through the unlawful transfer of an NRC license, i.e., a transfer without the consent of the NRC, after full disclosure. Therefore, each of the corporations referred to in the caption of this Order ("Corporations") is, and remains, jointly and severally liable and responsible for the cleanup of the Bloomsburg facility and for the conduct of all other activities on that site that require an NRC license.

On April 20, 1988, following renewed concerns with cleanup issues at the site, the NRC again sought clarification of the relationships among the various corporations with apparent interests in the Bloomsburg facility and the role that each would play in the cleanup of that site. In stark contrast to the January 21, 1981 and November 11, 1983 submittals, Industries' June 24, 1988 response concedes that the name change was made concurrently with a corporate reorganization, although even the June 24, 1988 response fails to state that one purpose of the reorganization apparently was to limit liability, as stated in the July 11, 1980 U.S. Radium letter to its stockholders. Consequently, Safety Light's January 21, 1981, November 11, 1981, and June 24, 1988 submissions to the NRC were incomplete and inaccurate in material respects.

V

In addition to the foregoing, the soil and groundwater at the Bloomsburg facility have become radioactively contaminated as a result of past operations at the facility. The principal radionuclides are tritium, strontium-90 and radium-226. The levels exceed NRC limits that would permit unrestricted access to the site. Tritium has also been detected in groundwater off-site in the well of a nearby house. Although the tritium in that well is not yet above drinking water limits set by the U.S. Environmental Protection Agency, further off-site contamination is likely to occur over time due to the movement of groundwater and soil erosion. Pits on the site contain unknown types and quantities of radioactive material that pose a potential threat to the health and safety of employees and any others on the site. Access to the site by the public is not restricted and members of the public have been and may be present. Therefore, access needs to be restricted and decontamination of the facility and real estate is required and must commence immediately.

VI

Prior to the numerous transactions set forth above, on January 25, 1979, the NRC amended License No. 37–00030–02 to include License Condition 14 to

require a nine-month plan for implementing specified decontamination activities submitted earlier in a U.S. Radium letter dated October 23, 1978. This letter also stated that a schedule would be developed for decontamination activities beyond the activities specified in the decontamination plan. Condition 13 of License No. 37–00030–02 required U.S. Radium to provide the NRC with a report on the status of decontamination efforts and a schedule of work for 12 month periods beginning July 1, 1979. The NRC's inspection of the Bloomsburg facilities on November 12, 1986 and the site contamination survey provided in a letter to the NRC dated February 6, 1987 indicate that the specified decontamination activities were not performed. Furthermore, while Safety Light has provided a report of environmental monitoring each year since 1983, Safety Light has not provided the NRC with the required report on the status of decontamination efforts and schedule of work since License Condition 13 was added to the license.

As a result, by letter dated April 20, 1988, Safety Light, Industries, and all other apparent successor corporations to U.S. Radium were requested to provide a decommissioning plan for the site which would permit the release of the site for unrestricted use. This decommissioning plan was to provide for a final radiological survey that would include all areas where licensed material has been used, stored, or buried. The decontamination of the site was permitted to be gradual, extending over a period of ten years, but was to commence within twelve months.

No substantive responses were made to these requests for a plan. By now, the NRC would have expected to have observed action to satisfy the foregoing license conditions. On July 8, 1988, the NRC inspected the Bloomsburg facility and confirmed that there was no current effort underway to decontaminate the facility. This failure to commence the required decontamination constitutes a willful violation of an NRC requirement. As stated above, the NRC considers all corporate successors of U.S. Radium jointly and severally liable for site cleanup and all other activities requiring a license.

Under the terms of Conditions 13 and 14 of License No. 37–00030–02, as well as the NRC's April 20, 1988 letter, these corporations were put on clear notice that decontamination was necessary and required, and were given ample opportunity to submit proposed milestones and plans for decontamination. Rather than formulate and implement a decommissioning plan in response to the 1979 license conditions, it now appears U.S. Radium reorganized in a deliberate attempt to limit liability and responsibility for cleanup. Despite repeated efforts by the NRC to get U.S. Radium and its successors, including but not limited to Safety Light, to take steps to initiate meaningful decontamination efforts at the Bloomsburg facility, these steps have not been taken. The presence of considerable known contamination, coupled with the uncertain extent of that and other, as yet unknown, contamination requires that action be taken immediately to survey, stabilize, and clean up the site.

In order to ensure that the Corporation provide adequate resources to evaluate, plan, and implement decontamination efforts with proper radiological safety procedures, I have determined that specific decontamination requirements and milestones are necessary and that decontamination needs to begin expeditiously so as to minimize any threat to public health and safety. As a result of the failure of U.S. Radium and its successors to comply with section 184 of the Atomic Energy Act and 10 CFR 30.34(b), the successor corporations remain subject to the jurisdiction of the NRC. In view of the corporations' apparently willful failure to fully meet the terms of section 184 of the Atomic Energy Act and 10 CFR 30.34(b), as well as other conditions in the license, though given opportunity to do so, and their incomplete and inaccurate statements to the NRC, and in view of the need to expeditiously begin decontamination to minimize any threat to public health and safety, I have determined that the NRC lacks reasonable assurance that site characterization and decontamination of the Bloomsburg facility will be initiated and completed in an orderly and timely fashion to ensure that the health and safety of the public, including current employees and adjoining landowners, will be protected. This is particularly so in light of the apparent financial inability of any one successor corporation to U.S. Radium to clean up the Bloomsburg facility. Accordingly, the public health, safety and interest require that the actions specified by section VII of this Order commence immediately. For these reasons and pursuant to 10 CFR 2.204, no prior notice is required, and this Order is immediately effective.

VII

In view of the foregoing, and pursuant to sections 81, 161b, 161c, 161r, 161o, 182, 184 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Parts 30 and 32, *It Is Hereby Ordered, Effective Immediately, That License Nos.* 37–00030–02, –08, –07E, –09G and –10G *Are Modified As Follows:*

A. Within 90 days from the date of this Order, Safety Light Corporation shall post the premises as required by 10 CFR Part 20 and shall control access to all contaminated areas at the Bloomsburg facility by a fence or other suitable means so as to create a restricted area, as defined in 10 CFR Part 20.

B. Within 45 days from the date of this Order, all Corporations shall jointly submit, to the Regional Administrator, NRC, Region I, for his review and approval, a joint plan to characterize the radioactivity at the Bloomsburg site. The plan shall describe in detail how a complete radiological and geohydrological survey of all facilities and of the surrounding surface and subsurface soil and groundwater will be conducted in order to fully determine the radionuclide concentrations and their lateral and depth profiles, as well as their movement in the groundwater and soil. The surveys shall be sufficient to develop a complete plan for decontamination/removal operations necessary to permit unrestricted access to the site. The plan shall include, but not be limited to, provisions to address the issues contained in the 1988 NRC Environmental Evaluation of the Safety Light Corporation Site, Bloomsburg, Pennsylvania. Particular attention shall be given to identifying areas of the site that should be given priority in the site decontamination activities. The joint plan shall provide a schedule, with milestones, for completion of the site characterization within 180 days. The plan shall specify the amount of funds that each of the Corporations is to provide for implementation of the plan. Any corporation that does not agree with the joint plan may submit an individual plan, with a statement explaining the reasons for disagreement with the joint plan. A corporate officer, not lower than the President, from each of the Corporations shall certify, under oath or affirmation, to the accuracy of the information contained in the site characterization plan and to the intent on behalf of the corporation to implement the plan.

C. Within 180 days from the date the Regional Administrator approves the site characterization plan required by section VII.B. of this Order, all Corporations shall jointly submit, to the Regional Administrator, NRC, Region I, for his review and approval, a single

report that contains a complete radiological characterization of the site, with a description of the location and level of all sources of radiation and contamination, including non-radiological hazards. A corporate officer, not lower than the President, for each of the Corporations shall certify, under oath or affirmation, to the accuracy of the information contained in the site characterization report.

D. Within 30 days from the date of the Regional Administrator approves the site characterization report required by section VII.C. of this Order, all Corporations shall jointly submit to the Regional Administrator, NRC, Region I, for his review and approval, a single decontamination plan with a timetable for specific decontamination activities (milestones) and transfer of contaminated waste. The plan shall include the rationale for the priorities established and specify the amount of funds that each of the Corporations is to provide for implementation of the plan. Any Corporation that does not agree with the joint plan may submit an individual plan, with a statement explaining the reasons for disagreement with the joint plan. A corporate official, not lower than the President, from each of the Corporations shall certify, under oath or affirmation, to the accuracy of the decontamination plan, and to the intent on behalf of the Corporation to implement the plan.

E. Following the Regional Administrator's approval of the decontamination plan required by section VII.D. of this Order, a corporate officer, not lower than the President, from each of the Corporations shall submit, within 15 days of the end of each calendar quarter, a status report, under oath or affirmation, to the Regional Administrator of NRC, Region I, stating:

1. The progress that has been made toward carrying out the decontamination plan during the previous calendar quarter. In the event that a milestone set forth in the decontamination plan submitted in response to Section VII.D, is not met during the period covered by the report, the report shall indicate: (1) The date by which the milestone is expected to be accomplished; (2) the reason for the failure to meet the milestone; and (3) the impact that the failure to meet the milestone will have on the decontamination plan and schedule;

2. The actions under the decontamination plan that are expected to be accomplished within the next calendar quarter; and,

3. The financial resources available during the period covered by the report, including but not limited to revenue, costs and expenses, net losses or profits, and sums expended on decontamination of the Bloomsburg facility.

F. No Corporation named herein shall either abandon or transfer the Bloomsburg facility, until the NRC has confirmed that a successful decontamination of the Bloomsburg facility has been completed.

VIII

The licensee, the Corporations, or any person adversely affected by this Order may request a hearing within 30 days of the date of its issuance. Any answer to this Order or request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406. If a hearing is requested by the licensee or the Corporations, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained. If a person other than the licensee or the Corporations requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this Order or request for hearing shall not stay the immediate effectiveness of this Order. Upon the failure of the licensee or other Corporations herein named to answer or request a hearing within the time specified, this Order shall be final without further proceedings.

IX

Further information is needed to determine whether the Commission can have reasonable assurance that future activities at the Bloomsburg facility can be conducted in accordance with the Commission's requirements and the terms of this Order.

Accordingly, to determine whether the licenses should be further modified, suspended or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, within 30 days from the date of this Order, a corporate official, not lower than the President, for each of the Corporations shall state in writing, under oath or affirmation, or where appropriate submit, pursuant to sections 161c and 182 of the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 30 and 32, answers to the following *Demand For Information:*

A. Describe the extent to which the decontamination of the Bloomsburg facility was considered, if at all, and by whom, in determining the nature of the reorganizations and transfer as discussed in this Order.

B. Copies of all contracts, agreements, deeds, or other instruments of conveyance, between any of the Corporations or individuals concerning responsibility for cleanup of the Bloomsburg site.

C. For each Corporation, copies of all annual financial statements, including but not limited to, balance sheets showing all assets and liabilities and profit and loss statements, for the three years prior to this Order.

D. For each Corporation, copies of all quarterly financial statements, including but not limited to, balance sheets showing all assets and liabilities and profit and loss statements, for the four quarters prior to this Order.

E. For each Corporation, copies of all annual Federal tax returns for the three tax years prior to this Order.

F. A listing of the names of all individuals or corporations owning at least 10% of the stock in any Corporation, indicating each owner's address, the number of shares owned, and the total number of shares outstanding.

X

The Regional Administrator of NRC Region I may, in writing, relax or rescind any provision of this Order or Demand for Information upon the showing, in writing, of good cause.

For The Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Dated at Rockville, Maryland this 16th day of March 1989.

[FR Doc. 89-6896 Filed 3-22-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Extension of Deadline for Public Comment

Action: Advance notice of further policy development on dissemination of information.

Summary: On January 4, 1989, the Office of Management and Budget (OMB) published at 54 FR 214–220 an Advance Notice of Further Policy

Development on Dissemination of Information. The notice solicited public comment in the development of policy concerning the dissemination of information by executive branch agencies. The proposed policy, which supplements guidance found in OMB Circular No. A–130 and incorporates OMB Circular No. A–3, covers selected aspects of information dissemination, including electronic dissemination of information.

Extended Date: Comments from the public were requested no later than March 9, 1989. The deadline is now extended to no later than April 10, 1989.

Address: Comments should be addressed to: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Room 3235, New Executive Office Building, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395–4814.

James B. MacRae, Jr.,

Acting Administrator Office of Information and Regulatory Affairs.

[FR Doc. 89–6798 Filed 3–22–89; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26638; File No. SR–MBS–89–2]

Self-Regulatory Organizations; Proposed Rule Change by MBS Clearing Corporation Relating to By-Law Amendment;

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 10, 1989 MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The proposed rule change consists of an amendment to Article III, section 3.1 of the Corporation's By-Laws, reducing the authorized number of directors from fifteen to eleven.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce the authorized number of Directors from fifteen to eleven. The present Board is divided into three classes—Class I, Class II and Class III. Each class currently consists of five Directors, each elected for a three-year term. With the proposed Rule change, there will be four Class I Directors, three Class II Directors and four Class III Directors.

Prior to 1988, the Corporation's By-Laws provided for thirteen Directors, a number believed sufficient to provide effective representation of participants in the Corporation's Clearing and Depository Divisions. In File No. SR–MBS–88–1, submitted January 13, 1988, the Corporation filed an amendment to the By-Laws increasing the number of Directors to fifteen. To fill the vacancies created by the increase in the number of Directors, the Board appointed two representatives of the Midwest Stock Exchange, Incorporated ("MSE"), the Corporation's sole stockholder, who would participate in negotiations to structure the sale of the Corporation's Depository Division to Participants Trust Company ("PTC")

An agreement for the sale of the Depository Division to PTC has now been signed, and the sale is expected to be closed in the near future. The objective of their appointment having been accomplished, the two representatives of MSE have resigned from the Board and have not been replaced, and additional resignations are expected upon the closing of the sale. Following the closing, the Corporation will continue to operate its Clearing Division and believes that an eleven-member Board, while smaller than the thirteen member Board previously required to represent the interests of both Clearing Division and Depository Division Participants, will be of ample size to allow representation of a broad range of Clearing Division Participants.

The proposed rule change is consistent with the Securities Exchange Act of 1934 in that it facilitates the fair representation of the Corporation's Participants and sole stockholder in the administration and governance of the Corporation's affairs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Clearing Division Participants were advised of the proposed Rule change in an Administrative Bulletin dated February 13, 1989. No comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No.

SR–MBS–89–2 and should be submitted by April 13, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 17, 1989.

[FR Doc. 89–6882 Filed 3–22–89; 8.45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16872; 812–7173]

GG1A Funding Corp.; Application

March 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: GG1A Funding Corporation.

Relevant 1940 Act Section: Exemption requested under section 6(c) from all provisions.

Summary of Application: Applicant seeks an order to permit it to assist System Energy Resources, Inc. ("SERI") in the financing and refinancing of certain property through leveraged lease transactions in which SERI will be the lessee.

Filing Date: The application was filed on November 16, 1988 and amended on March 14, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested persons may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 10, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 1209 Orange Street, Wilmington, Delaware 19801.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272–3026 or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Delaware corporation and all of its shares of common stock are owned by Corporate Trinity Company ("CTC"), a company controlled by The Corporate Trust Company ("CT"). There is, and in the future will be, no class of equity securities of Applicant other than its common stock. SERI, an Arkansas corporation, is a wholly-owned subsidiary of Middle South Utilities, Inc., a Florida corporation and registered public utility holding company ("MSU").

2. Applicant's sole purpose is to assist SERI in the financing and refinancing, in whole or in part, of its 90% undivided interest in Unit No. 1 ("Unit 1") of the Grand Gulf Nuclear Generating Station ("Grand Gulf"), certain facilities common to Unit 1 and Unit 2 of Grand Gulf ("Common Facilities"), and capital improvements thereon in one or more leveraged lease transactions ("Lease Transactions") in which SERI will be the lessee (the "Lessee").[1] CTC and CT have entered into an agreement with SERI under which CTC and CT have agreed to cause Applicant to make loans to one or more Lessors (as defined below) designated by SERI from time to time and SERI has agreed to provide certain indemnifications to CTC and CT with respect to such participation. SERI will make the determination as to whether or not the debt portion of any Lease Transaction will be funded through the Applicant's sale of its debt securities (the "Lease Bonds"). Pursuant to an operating agreement and a joint construction, acquisition and ownership agreement relating to Grand Gulf (the "Project Agreements") with South Mississippi Electric Power Association ("SMEPA"), the owner of the remaining 10% undivided ownership interest in Grand Gulf, SERI is authorized to act as agent for SMEPA with respect to, and has responsibility for and control over, the construction, operation and maintenance of Grand Gulf. Rights under the Project Agreements relating to the undivided interests to be financed by SERI in the Lease Transactions will be assigned to the Lessors (as defined below) and reassigned for the benefit of the holders of Lessor Notes (as defined below).

3. Applicant's agreement to participate as lender in the Lease Transactions ("Participation Agreement") will be limited to making loans pursuant to a Loan and Security Agreement or a Trust Indenture and Security Agreement with a bank or trust company acting as trustee (in either case, a "Lease Indenture" with a "Lease Indenture Trustee") to certain lessors (Lessors") under leases ("Leases") which will be payable primarily from rentals and other payments by the Lessee under the Leases. The loans by Applicant will be without recourse to the general credit of the Lessors or their respective beneficiaries (as defined below) and will be evidenced by non-recourse obligations of the respective Lessors ("Lessor Notes"). Applicant expects that the lessor Notes will be offered and sold under circumstances making such transactions exempt from the registration requirements under the Securities Act of 1933 ("Securities Act").

4. Under each Lease, the Lessor will be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least $50,000,000. The Lessor will act as owner trustee under a grantor trust formed exclusively for the purpose of the Lease Transactions.[2] Solely to comply with applicable state law, an individual may be appointed to serve as co-owner trustee under such trust agreement.[3] A portion of the purchase price of the property owned by the Lessors and leased to the Lessee ("Leased Property") will be paid by the beneficiaries of the grantor trust and that amount will constitute their equity investment in the Leased Property. The

[1] The SEC granted an order in Holding Company Act Rel. No. 35–24791 (Dec. 23, 1988) permitting the sale and leaseback of approximately 10–15% of SERI's interest in Unit 1 ("1988 Lease Transactions"), the proceeds of which were used to redeem certain of SERI's outstanding first mortgage bonds. The 1988 Lease Transactions, subsequent Lease Transactions, and the Lease Bonds (as defined herein) relating to such transactions will be conducted in compliance with the representations and conditions in this application.

[2] The initial corporate co-owner trustee under the 1988 Lease Transactions, Meridian Trust Company ("MTC"), does not have a combined capital and surplus of at least $50 million. However, MTC is an indirect, wholly-owned subsidiary of Meridian Bancorp, Inc. ("Meridian"), with total consolidated assets of over $8 billion, and Meridian has agreed unconditionally to guarantee the performance of MTC's obligations.

[3] The role of such individual co-owner trustee would be minimal and consist primarily of taking title to all or part of the trust estate jointly with the corporate co-owner trustee and joining in the execution of the Transaction Documents (defined herein). The trust documents would not empower the individual to take any action thereunder except jointly with, or with the consent in writing of, the corporate co-owner trustee.

beneficial interests in the grantor trust will be offered and sold in private transactions to sophisticated investors. The nature and availability of tax benefits, the legal and regulatory framework of the Lease Transactions, and the complex financial analysis required assure that only sophisticated institutional investors will be holders of or potential transferees of the beneficial interests. As long as the Lessor Notes issued by the Lessor are outstanding, the Applicant will receive assurances from each Lessor and the beneficiaries under the related grantor trust that they are not and will not be an investment company within the meaning of section 3(a) of the 1940 Act, or are or will be deemed to be excluded from the definition of an investment company by virtue of the provisions of section 3(b) or section 3(c) of the 1940 Act.

5. Under each Lease, the Lessee (*i.e.*, SERI) will be unconditionally obligated to make rental and other payments sufficient to pay the principal of, and premium, if any, and interest on, the Lessor Notes issued in connection therewith without right of counterclaim, setoff, deduction or defense.[4] The documentation for the Lease Transactions ("Transaction Documents," which include the Project and Participation Agreement) will require that each series of Lessor Notes pledged as security for any series of Lease Bonds contain provisions for redemption which correlate to the redemption provisions of such Lease Bonds. The Transaction Documents also will require that, so long as no event of default shall have occurred under any Lease, the related Lease Indenture Trustee shall not take or cause to be taken any action contrary to the Lessee's rights under such Lease, including the right to quiet use, enjoyment and possession of the Leased Property.

6. The Lease Indentures will set forth the terms and conditions under which the Lessor Notes will be issued. All Lessor Notes issued under each Lease Indenture will be equally and ratably secured thereunder. Each Lease Indenture will require the Lessor that is a party to such agreement to grant to the Lease Indenture Trustee thereunder an assignment of basic rentals and certain other payments to be made by the Lessee under the applicable Lease ("Lease Indenture Estate"). Applicant represents that it shall not purchase any Lessor Note unless such Lessor Note and all other Lessor Notes, if any, are issued in respect to Leased Property having a fair market sales value (measured at the time such Leased Property was first financed under the Lease) at least equal to 110% of the original principal amount of such Lessor Note and such other Lessor Notes.

7. All Lease Bonds will be issued under a common indenture and a separate supplemental indenture for each series (collectively, the "Collateral Trust Indenture") which will establish the terms of the Lease Bonds of that series and will be qualified under the Trust Indenture Act of 1939 ("Trust Indenture Act"). All series of Lease Bonds will be issued by Applicant under the Collateral Trust Indenture and will be secured thereunder on a parity basis by a first lien on, and a security interest in, all of the assets of Applicant, consisting primarily of the acquired Lessor Notes and a lien on and security interest in the Leased Property. Applicant will assign and pledge to the Trustee under the Colleteral Trust Indenture, as security for the payment of the principal of, and premium, if any, and interest on, all Lease Bonds, the Lessor Notes and any other assets held by the Applicant. The pledged Lessor Notes shall be registered in the name of the Trustee. Each such Lessor Note, in turn, will be secured by, among other things, (i) a security interest in substantially all the rights of the related Lessor under the related Lease, including the right of the Lessor to receive basic rentals and certain other amounts payable by SERI thereunder, and (ii) the Leased Property under the related Lease. The trustee under the Collateral Trust Indenture ("Trustee") will be a bank or trust company not affiliated with any of the Lessors and will not be a trustee under any indenture of MSU or SERI or any other of MSU's subsidiaries.

8. The various series of Lease Bonds will have terms which may differ as to interest rates, sinking fund obligations of Applicant, the right of Applicant to redeem such Lease Bonds, and other matters. The interest rates, maturities and principal amounts of each series of Lease Bonds will be established based on prevailing market conditions, thereby giving Applicant flexibility to take advantage of changing market conditions. If the cash flow to the Applicant from payments on the Lessor Notes exceeds the cash requirements at any such time of Applicant's obligations under the Lease Bonds, the resulting funds ("Temporary Funds") may be invested by Applicant in certain investments ("Permitted Investments" as defined in condition 6 below), in each case maturing at such time as shall be necessary to satisfy Applicant's obligations under the Lease Bonds ("Temporary Holdings"). The cash requirements at any given time of Applicant's obligations under the Lease Bonds, however, shall never exceed the cash flow to Applicant from payments made on the Lessor Notes. The amounts due under the Lessor Note will be the Lessor's share of Applicant's Cost of Money, as defined in the application, so that the amount of principal and interest payable under the Lessor Notes will be adequate to discharge the interest or, principal of, and all other costs and expenses payable by the Applicant under, the Lease Bonds.

9. The initial issuance of Lease Bonds will be through an underwritten public offering of one or more series having an aggregate principal amount of approximately $435 million. Although SERI will not be the actual issuer of the Lease Bonds, it will be considered the "issuer" under the Securities Act and "obligor" under the Trust Indenture Act. Any registration statement for the Lease Bonds filed under the Securities Act will name SERI as the registrant and will be signed on behalf of SERI by such of its officers and directors as may be required under the Securities Act and the rules and regulations of the SEC thereunder. Accordingly, the provisions of section 11 of the Securities Act will apply to SERI. Subsequent Lease Bonds will be issued in private placements pursuant to section 4(2) of, or in underwritten public offerings registered under, the Securities Act, or possibly in distributions exempt from registration because they will come to rest outside the United States, in which case, Applicant will adopt agreements and procedures reasonably designed to prevent such Lease Bonds from being offered or sold in the United States or to United States persons (except as United States counsel may then advise is permissible).

10. Under the Collateral Trust Indenture, the Trustee will be required to give prompt notice to all holders of Lease Bonds when it has actual knowledge of the occurrence of any event of loss or deemed event of loss under any Lease. Thereafter, each Lease Bondholder will have the right to direct the Trustee, as the holder of the pledged Lessor Notes, to vote the principal amount of the pledged Lessor Notes in proportion to the principal amount of Lease Bonds owned by such holder to direct the Lease Indenture Trustees to take such action, or refrain from taking such action, as is permitted under the

[4] As Lessee, SERI well be responsible for paying all taxes, insurance premiums, operating and maintenance costs, and all other similar costs associated with the undivided interest in Unit 1.

Lease Indentures. Under each Lease Indenture, directions given to the Lease Indenture Trustee will be dictated by the holders of a majority in principal amount of all Lessor Notes issued thereunder, which will be the holders of a majority in aggregate principal amount of the outstanding Lease Bonds. By virtue of this pass-through voting mechanism, the rights and remedies available under the provisions of the Lease Indentures to Lessor Noteholders will be exercisable directly by the Lease Bondholders through their fiduciary, the Trustee. To the extent the Trustee does not receive instructions following an event of default under a Lease Indenture, it will take such action with respect to the Lessor Notes as a prudent man would in the case of his own property.

11. In the event SERI defaults in the payment of that portion of rent necessary to pay all amounts due and payable in respect of the Lessor Notes, the Lease Indenture Trustee would have the right to exercise, concurrently with the exercise by the respective Lessor of any remedies available to it, all of the rights and remedies against SERI provided in the related Lease. By virtue of the pass-through voting mechanism noted above, the exercise of such rights and remedies would be at the direction of the Lease Bondholders through the Trustee's instructions to the Lease Indenture Trustee. The rights and remedies would include the right to demand, after a specified grace period, that the Lessee pay all unpaid basic rent plus a stipulated amount which, in all cases, will be sufficient to pay the principal of, and premium, if any, and interest on, the related Lessor Notes. These amounts will be paid directly to the Trustee for distribution to the Lease Bondholders. Therefore, the Lease Bondholders will have access under the Collateral Trust Indenture and the Lease Indentures to the credit of SERI which will entitle the Lease Bondholders to realize on the collateral secured thereby in an amount up to the aggregate unpaid amount of such Lessor Notes. In certain circumstances, SERI may assume the obligations of the Lessor Notes or purchase from the beneficiaries of the grantor trusts issuing the Lessor Notes their interests in order to avoid an accelerated obligation to prepay the Lessor Notes under the provisions of the Leases.

12. In the event of refinancing or releveraging of interim bank indebtedness incurred by the Lessors to pay for the Leased Property, the Applicant's participation will be subject to the conditions set forth in section I.A.11. of the application to assure proper documentation and a security interest for repayment from the Lessors. Because of these conditions and SERI's obligation to pay the costs and expenses of the refinancings, such refinancings would be infrequent and would occur only where it is economically advantageous due to lower market interest rates or tax benefits. Also, if such interim bank indebtedness is not refunded in full at the time of the issuance of the Lease Bonds, no bank would have any greater rights under the related Lease Indenture than those available to the Lease Bondholders under the related Collateral Trust Indenture.

13. The Transaction Documents may provide that the issue, sale and delivery of a particular series of Lease Bonds financing Leased Property may transpire up to two months prior to the date of the execution and delivery of the Leases ("Lease Closing Date"). Pending the Lease Closing Date, the Trustee may invest the net proceeds of the Lease Bonds in Permitted Investments. However, the Collateral Trust Indenture will require that the Lease Bonds be secured by (a) the proceeds of the sale of such Bonds, (b) Temporary Holdings and Temporary Funds, if any, (c) Lessor Notes previously pledged to the Trustee, and (d) an obligation of the Lessee that will expire on the related Lease Closing Date and provide for the payment of amounts sufficient to pay such Bonds. If the Lease Closing Date does not occur two months after the Lease Bonds are issued, then no later than three months thereafter, SERI must cause (and, if necessary, provide funds necessary for) the redemption of such Lease Bonds.

14. Except to the extent payable from the proceeds of refinancing Lease Bonds, the Temporary Holdings, or the initial issuance of Lease Bonds where the relevant Lease Closing Date does not occur simultaneously, due to the nonrecourse nature of the Lessor Notes and the limited scope of Applicant's activities, payment of the principal of, and premium, if any, and interest on, the Lease Bonds will be made exclusively from amounts paid by the Lessee and, if an event of default has occurred under a Lease Indenture, from those proceeds obtained by the Lease Indenture Trustee upon its exercise of remedies under such Lease Indenture.

15. During any fiscal year of Applicant, the average daily balance of the Temporary Holdings plus the amount of Temporary Funds will not be permitted to exceed ten percent of the average daily balance of the aggregate principal amount of the outstanding Lease Bonds, except for the situation described in paragraph 13 above.

Applicant's Legal Conclusions

Applicant's requested exemption under section 6(c) of the 1940 Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act for the following reasons. Applicant's activities are essentially those of a special purpose finance company. The proposed issuance of Lease Bonds would provide a financially favorable method for SERI to acquire the use of capital assets necessary to conduct its business since SERI would not be confined to the terms offered by the institutional private placement market. Although the Lease obligations technically are not a guarantee of the Lease Bonds, the unconditional obligations of SERI under the Leases, combined with the default and remedy provisions under the Lease Indentures and the Collateral Trust Indenture and, in particular, the pass-through voting mechanism provided thereby, will cause the debt service on the Lease Bonds ultimately to constitute an obligation of SERI that is the functional equivalent of a guaranty. Thus, the Lease Bondholders will have access to SERI's credit. Furthermore, because of the pass-through voting mechanism, the Lease Bondholders will be able to direct the exercise of the rights and remedies provided in the Lease Indentures and Collateral Trust Indenture against SERI.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. In the future, all outstanding shares of Applicant's common stock will be owned by CTC or a successor to, or assignee of, CTC performing similar functions, and there will be no public offering of the common stock or of any other equity security of Applicant.

2. Applicant's sole purpose is and will be limited to operating as a "pass-through" vehicle for the financing and refinancing of SERI's interests in Unit 1.

3. The Lease Indenture Estate will include, among other things, (a) substantially all of such Lessor's rights under the Lease to which it is a party, including the right to receive all basic rent and certain other amounts payable by the Lessee thereunder, (b) the Leased Property, and (c) such Lessor's rights under certain agreements relating to (i) the Project Agreements and (ii) its rights to utilize certain ancillary services and facilities (including, if applicable, the

Common Facilities) in respect of the Leased Property after the expiration of the Lease.

4. Payments of the principal of, and premium, if any, and interest on, the Lessor Notes issued to the Applicant will be due in such amounts and at such times as will be sufficient to pay the principal of, and premium, if any, and interest on, the Lease Bonds on the scheduled payment dates therefor, including sinking fund payment dates. The Lessee shall indemnify the Applicant for all other costs and expenses payable by the Applicant in respect of the Lease Bonds.

5. SERI, in its capacity as Lessee under each Lease, will covenant that (a) it will not, directly or indirectly, create, incur, assume or permit to exist any lien or other encumbrance on or with respect to the Leased Property, the Lessor's title thereto, or any interest of the Lessor therein, except certain "permitted liens" listed in section I.C.6. of the application, and (b) it will promptly at its own expense take such action as may be necessary duly to discharge any such lien, except permitted liens.

6. Applicant will not invest in, reinvest in, own, hold or trade securities other than Lessor Notes and Permitted Investments, the latter such term being limited under the Transaction Documents to the following investments: (i) Direct obligations of the United States of America; (ii) obligations fully guaranteed by the United States of America; (iii) certificates of deposit issued by, or banker' acceptances of, or time deposits with, any bank, trust company or national banking association incorporated or doing business under the laws of the United States of America or one of the States thereof (but not exceeding $15,000,000 in principal amount with respect to all certificates of deposit and time deposits at any given time for any one bank, trust company or national banking association) having a combined capital and surplus of at least $300,000,000 (including the Trustee, the Lease Indenture Trustee, a Lessor and any paying agent if such conditions are met); (iv) commercial paper to companies incorporated or doing business under the laws of the United States of America or one of the States thereof (but not exceeding $15,000,000 in principal amount at any given time for any one company) and in each case having a rating assigned to such commercial paper by Standard & Poor's Corporation or Moody's Investors Service, Inc. (or, if neither such organization shall rate such commercial paper at any time, by any nationally recognized rating organization in the United States of America) equal to the highest rating assigned by such organization; and (v) repurchase agreements fully collateralized by an obligation of the type described in clauses (i) or (ii) above, pursuant to which a bank, trust company or national banking association referred to in clause (iii) above or another financial institution having a net worth of at least $200,000,000 is obligated to repurchase any such obligation not later than 90 days after the purchase of any such obligation.

7. At least 85% of the cash or cash equivalents raised by the Applicant from the sale of the Lease Bonds will be used to finance SERI's interests in Unit 1, in whole or in part, including refinancing outstanding Lease Bonds issued for such purpose, as soon as practicable, but in no event later than six months after the Applicant's receipt of such cash or cash equivalents.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-6863 Filed 3-22-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Columbia, South Carolina will hold a public meeting at 9:30 a.m., on Tuesday, April 25, 1989, at The Heritage, 260 W. Palmetto Street, Florence, South Carolina to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John C. Patrick, Jr., District Director, U.S. Small Business Administration, P.O. Box 2786, Columbia, South Carolina, 803/765-5339.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 15, 1989.

[FR Doc. 89-6874 Filed 3-22-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5383]

Far East Capital Corp., Application for License to Operate as a Small Business Investment Co.

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Far East Capital Corporation, 123 South Figueroa Street, Los Angeles, California 90012 (Applicant) for a license to operate as a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et. seq.).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
Henry Y. Hwang, 954 Hillside Terrace, Pasadena, California 91125.	Board Chairman, Shareholder.	8.46
Robert Y. Huang, 6 El Concho Lane, Rolling Hills, California 90274.	President, Chief Financial Officer, Shareholder.	8.45
Steve Bubalo, 7808 Torreyson Drive, Los Angeles, California 90046.	Secretary, Shareholder.	8.45
Joseph M. DeMarco, 320 Bradbury Drive, San Gabriel, California 91775.	Director, Shareholder.	4.85
David H. Hwang, 2364 Live Oak Drive, West Los Angeles, California 90068.	Director, Shareholder.	4.85
Far East National Bank, 123 South Figueroa Street, Los Angeles, California 90012.	Shareholder	60.00
Four other shareholders owning less than 2 percent each.		4.94
Total		100.00

The Applicant, a California corporation, will begin operations with $1,000,000 of paid-in capital and paid-in surplus. The Applicant will conduct its activities principally in the State of California.

The Applicant also intends to maintain a branch office at the

TransAmerica Pyramid Building, 600 Montgomery Street, San Francisco, California 94111.

As an SBIC under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the notice shall be published in a newspaper of general circulation in the Los Angeles and San Francisco, California Areas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: March 16, 1989.

[FR Doc. 89-6875 Filed 3-22-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Thursday, April 27, 1989 at 8:30 a.m. at the Hyatt on Union Square, 345 Stockton Street, San Francisco, California. Pursuant to section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c) (4), it has been determined the meeting will be closed to the public. Matters relative to privileged commercial information will be discussed. The agenda calls for the discussion of private sector physical security policies, bomb threat statistics, and security programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Mrs. Marsha J. Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20520, phone: 202/663-0002.

Date: March 10, 1989.

Clark Dittmer,

Director of the Diplomatic Security Service.

[FR Doc. 89-6854 Filed 3-22-89; 8:45 am]

BILLING CODE 4710-24-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Intergovernmental Policy Advisory Committee and Investment Policy Advisory Committee; Meetings and Determination of Closing of Meetings

The meetings of the Intergovernmental Policy Advisory Committee to be held April 10, 1989 from 9:30 a.m. to 12:00 Noon, in Washington, DC, and the Investment Policy Advisory Committee to be held April 18, 1989 from 9:30 a.m. to 12:00 Noon, in Washington, DC will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 89-6886 Filed 3-22-89; 8:45 am]

BILLING CODE 3190-01-M

Trade Policy Staff Committee; Written Comments on the President's Steel Program

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting written comments on the President's Steel Program. These comments will be considered by the Executive Branch in developing a steel policy for the period following the current program on September 30, 1989.

SUPPLEMENTARY INFORMATION:

1. Background

On September 18, 1984, the President established a government policy for the steel industry that included the negotiation of voluntary restraint arrangements with countries whose exports to the United States increased significantly due to dumping, subsidization, or diversion from other importing countries. Under section 801 of the Steel Stabilization Act of 1984, Congress granted the President authority to enforce quantitative limitations, restrictions, and other terms agreed to between the United States and steel-exporting countries under bilateral arrangements. Under this program, the United States concluded arrangements with 19 countries and the European Community. Authority to enforce the program and all bilateral arrangements terminates on September 30, 1989.

The Executive Branch is now in the process of developing a steel trade policy for the period following the current steel program. Possible elements of steel trade policy include: an international consensus on eliminating trade distorting practices; voluntary restraint arrangements; investment and worker retraining requirements for the industry; and market access for U.S. exports.

2. Public Comments

Written public comments are requested on the continuation of, or modifications to, the current steel trade program.

Parties wishing to submit written comments should provide 20 copies, by Noon, Wednesday, April 12, 1989, to Carolyn Frank, TPSC Secretary, Office of the U.S. Trade Representative, Room 523, 600 17th Street NW., Washington, DC 20506. Procedures for the submission of written briefs is contained in the Code of Federal Regulations, Title 15, Part 2003.

3. Additional Information

Any questions with regard to the review of the current steel trade program should be directed to Robert Cassidy, Director of Steel Trade Policy, Office of the U.S. Trade Representative, Room 422A, 600 17th Street NW., Washington, DC 20506; telephone (202-395-6160).

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 89-6878 Filed 3-22-89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Hulman Regional Airport, Terre Haute, IN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Hulman Regional Airport Authority for Hulman Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL–611.1, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694–7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Hulman Regional Airport are in compliance with applicable requirements of Part 150, effective January 13, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the Hulman Regional Airport Authority. The specific maps under consideration are the noise exposure maps: 1988 unabated conditions and 1993 unabated conditions in the submission. The FAA has determined that these maps for Hulman Regional Airport are in compliance with applicable requirements. This determination is effective on January 13, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depiciting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018.

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 260, Des Plaines, Illinois 60018.

Hulman Regional Airport Authority, Hulman Regional Airport, R. R. 31, Box 40, Terre Haute, Indiana 47803.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, on January 13, 1989.

Stanley Rivers,

Manager, Airports Division, Great Lakes Region.

[FR Doc. 89–6802 Filed 3–22–89; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Rickenbacker Airport, Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Rickenbacker Port Authority for Rickenbacker Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Rickenbacker Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before July 12, 1989.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 13, 1989. The public comment period ends March 15, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL–611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694–7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Rickenbacker Airport are in compliance with applicable requirements of Part 150, effective January 13, 1989. Further, FAA is reviewing a proposed noise

compatibility program for that airport which will be approved or disapproved on or before July 12, 1989. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Rickenbacker Port Authority submitted to the FAA on April 4, 1988 noise exposure maps, descriptions and other documentaton which were produced during the Airport Noise Compatibility Planning (Part 150) Study at Rickenbacker Airport from January 1987 to April 1988. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Rickenbacker Port Authority. The specific maps under consideration are Noise Exposure Maps: 1987 Current Unabated Conditions, Part A and B and 1992 Unabated Conditions, Part A and B. They are included along with supporting documentation found in the Part I Noise Exposure Map Documentation of the Part 150 Study in the submission. The FAA has determined that these maps for Rickenbacker Airport are in compliance with applicable requirements. This determination is effective on January 13, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Rickenbacker Airport, also effective on January 13, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 12, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, East Willow Run Airport, 8820 Beck Road, Belleville, Michigan 48111.

Rickenbacker Port Authority, Rickenbacker Airport, Building 109, A Avenue, Columbus, Ohio 43217.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, January 13, 1989.

Stanley Rivers,

Manager, Airports Division Great Lakes Region.

[FR Doc. 89-6803 Filed 3-22-89; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 166—User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the second meeting of RTCA Special Committee 166 on User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems to be held April 13-14, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the first meeting's minutes, RTCA Paper No. 90-89/SC166-8; (3) Working Group Activities Reports on Operations Working Group and Technology Working Group; (4) FAA briefing on Terminal Area Communications, Navigation, and

Surveillance Programs; (5) develop initial outline of Committee Report, RTCA Paper No. 91–89/SC166–9; (6) review of Glossary Terms/Acronyms and Definitions, RTCA Paper No. 94–89/SC166–11; and (7) other business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 15, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89–6812 Filed 3–22–89; 8:45 am]

BILLING CODE 4910–13–M

Office of Hearings

[Docket 46034]

U.S.-Australia Service Proceedings Hearing

Served March 17, 1989.

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on April 4, 1989, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC, before Administrative Law Judge Ronnie A. Yoder.

Dated at Washington, DC, March 17, 1989.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 89–6867 Filed 3–22–89; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Polk County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will not be prepared for a proposed highway project in Polk County, Florida.

FOR FURTHER INFORMATION CONTACT: D. B. Luhrs, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 681–7231.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement (EIS) for a proposed highway project to construct a new highway facility, the Imperial Parkway, from U.S. 98 at the terminus of the approved western leg of the Imperial Parkway to Interstate 4 in the vicinity of Berkley Road, Polk County, Florida, was issued on May 13, 1987 and published in the **Federal Register**. The FHWA, in cooperation with the Florida Department of Transportation, has since determined that preparation of an EIS is not currently necessary for this proposed highway project and hereby rescinds the previous Notice of Intent. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 13, 1989.

Dennis B. Luhrs,

District Engineer, Tallahassee, Florida.

[FR Doc. 89–6830 Filed 3–22–89; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; State Route 509, East-West Corridor; Pierce County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Pierce County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Federal Highway Administration, Division Administrator, 711 South Capitol Way, Suite 501, Olympia, Washington 98501, Telephone (206) 753–2120; E. R. Burch, State Project Development Engineer, Washington State Department of Transportation, Transportation Administration Building, Olympia, Washington 98504, Telephone (206) 753–6135; or A. T. Smelser, District Administrator, Washington State Department of Transportation, 5720 Capitol Boulevard, Tumwater, Washington 98504, Telephone (206) 753–7200.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation, the city of Tacoma and the Port of Tacoma, will prepare an environmental impact statement (EIS) on a proposal to improve State Route 509 (SR 509) in Pierce County, Washington. The proposed action would involve constructing approximately six miles of multi-lane highway on new alignment between Interstate 705 and East 11th Street and Marine View Drive. Also included in the proposed action is removal of the Blair Waterway Bridge.

Improvements to the SR 509 corridor are considered necessary to maximize the development potential of the Tacoma harbor industrial area by the Port of Tacoma, while at the same time to increase and enhance overall development of the city of Tacoma. The proposed action would improve intraport and cross port motor vehicle routes, including SR 509. Alternatives under consideration include (1) taking no action; (2) improving existing SR 509 (East 11th Street) from 'A' Street to Marine View Drive, including replacement of the Blair Waterway Bridge; and (3) mass transit and nonstructural alternatives. Included into and studied with the build alternatives will be design variations of grade, alignment, and bridge replacement type.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. An agency scoping meeting will be held on March 30, 1989 at 1:30 p.m. in the Port of Tacoma room at the World Trade Center, 3600 Port of Tacoma Road, Tacoma, WA. A public scoping meeting will be held in April 1989. A public hearing will be held. Public notice will be given of the time and place of the meetings and hearing.

The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the persons listed above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposal.)

Issued on: March 17, 1989.

Richard C. Schimelfenyg,

Area Engineer, Olympia, Washington.

[FR Doc. 89–6855 Filed 3–22–89; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 17, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Opinion Survey of Taxpayers Contacted by the IRS Examination Function.
Description: Information gathering for operation and program evaluation: The data collected will be used to evaluate the level of satisfaction of taxpayers contacted by the IRS Examination Function, to identify possible areas of program improvement, and thereby improve the effectiveness of Examination activities.
Respondents: Individuals or households.
Estimated Number of Respondents: 6,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,000 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89–6827 Filed 3–22–89; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 17, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0202.
Form Number: ATF F 5110.34.
Type of Review: Extension.
Title: Notice of Change in Plant Status (Supplemental).
Description: ATF F 5110.34 notifies ATF of the use of a Distilled Spirits Plant (DSP) for other activities or by alternating proprietor's use of plant premises and gives supporting information to show that the change in plant status is in conformity with laws and regulations. The form also indicates what bond covers the activities of the DSP at a given time.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,000 hours.
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 89–6828 Filed 3–22–89; 8:45 am]
BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 55
Thursday, March 23, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 28, 1989, 10:00 a.m.

PLACE: 999 E. Street NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89-7006 Filed 3-21-89; 2:34 pm]
BILLING CODE 6715-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Monday, March 27, 1989, 2:00 p.m.

PLACE: 1776 G Street NW., Board Room, Third Floor, Washington, DC 20006.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Keith Earley, 1759 Business Center Drive, P.O. Box 4115, Reston, VA. 22090, (703) 759-8414.

MATTERS TO BE CONSIDERED:

Closed: Minutes of the December 19, 1988, Board of Directors' Meeting
Closed: President's Report
Closed: Financial Report
Closed: Personnel Matter

Date sent to Federal Register: March 20, 1989.

Maud Mater,
Secretary.

[FR Doc. 89-6945 Filed 3-21-89; 9:04 am]
BILLING CODE 6719-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 15, 1989.

TIME AND DATE: 10:00 a.m., Wednesday, March 22, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Possible revisions of and additions to present Commission Procedural Rules 70-75, 29 CFR 2700.70-75.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629 / (202) 566-2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 89-6666 Filed 3-21-89; 3:39 pm]
BILLING CODE 6735-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 16, 1989.

Correction to Previously Issued Agenda

TIME AND DATE: 9:30. a.m., Thursday, March 23, 1989 (New Time).

PLACE: Room 600, 1730 K Street NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Local Union 1810, District 6, UMWA v. Ohio Valley Coal Co., as successor to NACCO Mining Co.*, Docket No. LAKE 87-19-C. (Issues include whether miners are entitled to compensation under Section 111 of the Mine Act.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 89-6936 Filed 3-21-89; 8:56 am]
BILLING CODE 6735-01-M

UNITED STATES POSTAL SERVICE

Board of Governors

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold a meeting at 9:00 a.m. on Tuesday, April 4, 1989, at U.S. Postal Service Southern Region Headquarters, 1407 Union Avenue, Memphis, Tennessee, in Conference Rooms A and B on the 14th floor. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Monday, April 3, 1989, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session: April 4—9:00 a.m. (Open)

1. Minutes of the Previous Meeting, March 6-7, 1989.
2. Remarks of the Postmaster General.
3. Officer Compensation. (Anthony M. Frank, Postmaster General)
4. Southern Region Overview. (William A. Campbell, Regional Postmaster General, Southern Region)
5. Report on Affirmative Action Programs in the Memphis Division. (Larry D. Stebbins Southern Regional Director, Human Resources)
6. Tentative Agenda for May 1-2, 1989, meeting in Washington, D.C.

David F. Harris,
Secretary.

[FR Doc. 89-7076 Filed 3-21-89; 3:39 pm]
BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of March 27, 1989.

A closed meeting will be held on Tuesday, March 28, 1989, at 2:30 p.m.

The Commissioners, Counsel to the Commissions, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 28, 1989, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Kincaid at (202) 272–2300.

Jonathan G. Katz,

Secretary.

March 21, 1989.

[FR Doc. 89–7089 Filed 3–21–89; 4:04 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 54, No. 55
Thursday, March 23, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[PF-513; FRL-3530-6]

Pesticide Tolerance Petitions

Correction

In notice document 89-4723 appearing on page 8393 in the issue of Tuesday, February 28, 1989, make the following corrections:

1. In the second column, under **Initial Findings**, in designated paragraph 2, in the sixth line, "metalaxyl" was misspelled; and in the eighth line, "methylphenyl" was misspelled.

2. In the 3rd column, in designated paragraph 5, in the 9th line, "[4-]" should read "[4-["; and in the 12th line, "benzoxazol" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-940-09-4520-13; (ES-039972, Group 90)]

Filing of Plat of Dependent Resurvey and Subdivision of Section 19; Michigan

Correction

In notice document 89-4794, beginning on page 8832 in the issue of Thursday, March 2, 1989, make the following correction:

The bracketed heading appearing at the beginning of the document should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 761

Areas Unsuitable for Mining; Areas Designated by Act of Congress; Reopening of Public Comment Period on Proposed Rule and Draft Environmental Impact Statement Supplement

Correction

In proposed rule document 89-5258 beginning on page 9847 in the issue of Wednesday, March 8, 1989, make the following correction:

On page 9847, in the third column, under **DATES**, in the fourth line, after "may" insert "not".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AGL-4]

Proposed Casey, IL, Transition Area Alteration

Correction

In proposed rule document 89-4841, beginning on page 8760, in the issue of Thursday, March 2, 1989, make the following correction:

On page 8761, in the first column, under "**The Proposal**", in the third paragraph, in the fifth line, "0350°" should read "035°".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24, 132, 141, 142, and 143

Proposed Customs Regulations Amendments Concerning Statement Processing and Automated Clearinghouse

Correction

In proposed rule document 89-5351 beginning on page 10019 in the issue of Thursday, March 9, 1989, make the following corrections:

1. On page 10019, in the first column, under **DATE**, the second line should read "before May 8, 1989".

2. On the same page, in the third column, in the second complete paragraph, in the second line, "permits" was misspelled.

§ 142.22 [Corrected]

3. On page 10025, in the first column, in § 142.22(b)(1), in the 13th line, "field" should read "filed".

BILLING CODE 1505-01-D

federal register

Thursday
March 23, 1989

Part II

Small Business Administration

13 CFR Part 124

Minority Small Business and Capital Ownership Development Program; Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

Minority Small Business and Capital Ownership Development Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) Proposes to amend its regulations governing the Minority Small Business and Capital Ownership Development Program authorized by sections 7 (j)(10) and 8(a) of the Small Business Act (15 U.S.C. 636(j)(10), 637(a)). In most instances the Proposed revisions would implement changes required by the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656), enacted November 15, 1988. Some Provisions, however, would incorporate into the regulations existing Agency Policy while others would implement proposed policy changes.

DATE: Comments will be accepted until April 24, 1989.

ADDRESS: Written comments should be addressed to Joseph O. Montes, Associate Administrator for Minority Small Business and Capital Ownership Development, 1441 L Street NW., Room 602, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Patricia R. Forbes at (202) 653–6573, or John W. Klein at (202) 653–6377.

SUPPLEMENTARY INFORMATION: On November 15, 1988, the enactment of the Business Opportunity Development Reform Act of 1988 (Reform Act) required SBA to substantially revise the Minority Small Business and Capital Ownership Development Program (MSB&COD Program or 8(a) Program), as authorized by sections 7 (j)(10) and 8(a) of the Small Business Act (Act) (15 U.S.C. 636(j)(10) and 637(a)). The 8(a) program was established in the late 1960's under the general authority of the Small Business Act, and was established by statute (Pub. L. 95–507) in 1978. Under Pub. L. 95–507, the stated purposes of the MSB&COD program are "* * * to (A) foster business ownership by individuals who are both socially and economically disadvantaged; (B) promote the competitiveness of such firms by providing such available contract, financial, technical and management assistance as may be necessary; and, (C) clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, material, and construction work from small business concerns owned by socially and economically disadvantaged individuals." By subsequent statutory amendments, the assistance provided to these individuals was extended to concerns owned and controlled by economically disadvantaged Indian tribes, Alaska Native Corporations and Native Hawaiian Organizations. Although in the Reform Act Congress found that the program remains a primary tool for improving the opportunities of such concerns in the Federal procurement process and for bringing such concerns into the nation's economic mainstream, Congress also found that the program must be substantially reformed in order to promote the statutorily required business development objectives and purposes.

It is SBA's intent to implement these congressional mandates through the revisions to its regulations as proposed here as well as through changes to the Agency's forms and standard operating procedures.

In preparing this proposed rule, SBA held two public meetings in December 1988 to receive public comment on the nature and extent of the regulations needed to implement the Reform Act. The first was held in San Francisco, California on December 9, 1988, and was attended by approximately 75 members of the public. The second was held in Washington, DC on December 19, 1988, and was attended by approximately 325 members of the public. All comments received have been considered in the preparation of this proposed rule.

SBA welcomes public comment on these proposed rules. However, since the Reform Act requires SBA to publish final implementing regulations by June 15, 1989, SBA is able to provide only a 30-day comment period on these regulations. In order to facilitate public comment as soon as possible after publication, SBA will have copies of the proposed rule available at its regional, district and branch offices.

SBA invites public comments on certain proposed sections in particular. In § 124.105 SBA proposes to define Asian Pacific Americans and Subcontinent Asian Americans. Public comment on the appropriateness of such definitions is invited.

Section 124.106 would require individuals claiming disadvantaged status who are married to submit their own and their spouses' financial statements. The purpose of this proposed section would be to prevent such individual from creating an unwarranted appearance of economic disadvantage by placing his/her assets in his/her spouse's name.

In addition, SBA invites comments on the effect of community property laws on such requirements.

Section 124.102 would impose new restrictions on disadvantaged and nondisadvantaged ownership. Section 124.109 would deem Franchises ineligible for 8(a) participation. SBA requests comments on these provisions in particular.

SBA invites public comment on proposed § 124.311 especially from procuring agencies. SBA is interested in news on whether 8(a) competition can be practically implemented by procuring agencies.

It should be noted that, although the numbering scheme is similar to that used in SBA's MSB&COD program regulations, published October 8, 1986 (51 FR 36132, *et seq.*), some sections have been renumbered or combined with other sections to accommodate new provisions required by the Reform Act. Proposed §§ 124.1 through 124.7 address issues which pertain to the program in general. Proposed § 124.100 sets forth definitions of key terms used in the regulations. Some of these definitions are identical to those now included in SBA's existing regulations. A list of new and amended definitions will be provided in the section-by-section review portion of this explanatory information. Some of these definitions will be highlighted.

Proposed §§ 124.101 through 124.113 address matters relating to program eligibility requirements both for admission to the program and for continued participation in the program. Proposed §§ 124.201 through 124.205 set forth information concerning the application process. Proposed §§ 124.206 through 124.211 set forth procedures relating to the Agency review of applications, program graduations, program terminations and suspensions as well as procedures relating to administrative appeal rights the Reform Act affords Program applicants and participants.

Proposed §§ 124.300 through 124.320 address requirements relating to business development and contracting. Proposed §§ 124.401 through 124.403 relate to special methods of contract financing: advance payments and business development expense. At this time, SBA proposes to make no changes to existing §§ 124.501 and 124.502, concerning the Development Assistance Program authorized by the Small Business and Capital Ownership Development Program. Proposed § 124.601 would be a new section setting forth miscellaneous reporting

requirements for current and former 8(a) Program Participants.

The Reform Act also contains provisions imposing new requirements relating to standards of conduct for certain SBA employees who have 8(a) program responsibilities and authorizing a loan program for 8(a) Program Participants. SBA intends to publish separate proposed rules amending Parts 105 and 120 of this Title, respectively, to implement these Reform Act requirements. In addition to §§ 124.206 through 124.211, SBA intends to implement the administrative hearing requirements of the Reform Act by proposing conforming amendments to its administrative hearing procedures found in Part 134 of this Title.

Section-by-Section Review

Section 124.1 proposes to describe the scope of these regulations. If adopted in final form, these rules would apply to participants in the MSB&COD program, as authorized by sections 7(j)(10) and 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a)). Certain sections of these rules relating to social and economic disadvantaged status would apply to other Federal programs for which social and economic disadvantaged status is a requirement of program eligibility. Such programs include, among others, the Small Disadvantaged Business (SDB) Set-aside and Bid Preference programs authorized by section 1207(a) of Pub. L. 99–661, and the section 8(d) Subcontracting Program, authorized by section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

Sections 124.2 and 124.3 describe statutorily mandated changes to 8(a) program administration. The position of the Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD) is required to be a career civil service position as opposed to a non-career appointee. The Reform Act requires SBA to establish a Division of Program Certification and Eligibility, which is to be headed by a Director. Once established, the Division would be responsible for handling matters relating to 8(a) program eligibility, termination and graduation, and certifications of disadvantaged status for purposes of any program or activity conducted under the authority of section 8(d) of the Small Business Act or any Federal law that references such section.

Section 124.4 describes the Commission on Minority Business Development which was authorized by section 505 of the Reform Act. The purpose of the Commission is to review all Federal programs designed to promote the development of minority owned businesses in order to ascertain whether the congressionally described goals and purposes of such programs are being realized.

Proposed § 124.5 would repeat existing § 124.3 which describes the effect of an 8(a) program applicant's willful violation of any of SBA's regulations governing its other programs.

Proposed § 124.6 would give notice to 8(a) program applicants and participants of the range and severity of penalties which could result from making misrepresentations or false statements in relation to the 8(a) program.

Section 124.7 would set forth restrictions on fees for applicant and 8(a) participant representatives. This proposed section would prohibit the applicant concerned or Program Participant from paying any fee to such representatives which would be contingent on program certification or on specific 8(a) contract award(s).

SBA is proposing to amend § 124.100 to include a number of new and changed definitions for terms used throughout this Title. In addition, SBA is proposing to eliminate those definitions which are no longer relevant or which are defined in the body of the regulations.

SBA would include. the following new definition paragraphs: (a), "Alaska Native;" (b), "Alaska Native Corporation;" (c), "Application" or "8(a) Application;" (d), "Business Opportunity Specialist;" (g), "Concern;" (h), "Descendant of an Alaska Native;" (j), "Fixed Program Participation Term" or "FPPT," (k), "Graduation;" (1), "Immediate family member;" (m), "Indian Tribe;" (n), "Joint venture agreement;" (r), "Native Hawaiian;" (s), "Native Hawaiian Organization;" (u), "Nondisadvantaged individual;" (v), "Non-8(a) business activity target;" (x), "Operational control;" (y), "Personal net worth;" (aa), "Principal place of business;" (bb), "Program Participant" or "Participant;" (cc), "Program Suspension;" (dd), "Program year;" (ff), "Requirement;" (gg), "Same or similar line of business;" (ii), "Termination;" (jj), "Tribally-owned concern;" and (kk), "Unconditional ownership."

In addition, SBA is proposing to amend these current definition paragraphs: (f), "Certification of SBA's competency;" (o), "Local buy item;" (dd), "Regular dealer;" and, (hh), "Self-marketing."

Proposed paragraphs (a), (b) and (h) would provide definitions for "Alaska Native," "Alaska Native Corporation" and "Descendant of an Alaska Native," respectively. Proposed paragraphs (m) and (jj) would provide definitions for "Indian tribe" and "Tribally owned concern." These definitions are necessary in conjunction with new proposed § 124.112 which would set forth the eligibility criteria for concerns owned by Indian tribes and Alaska Native Corporations.

Section 8(a) of the Small Business Act, as amended by Pub. L. 100–656, makes business concerns owned by Native Hawaiian Organizations eligible for 8(a) program participation. In accordance with this program change, SBA would adopt the definition for "Native Hawaiian" as contained in the Carl D. Perkins Vocational Act (20 U.S.C. 2313(a)(1)(B)) at paragraph (r). At paragraph (s), SBA would define "Native Hawaiian Organization."

SBA is also proposing to include as paragraph (j) a definition for "Fixed Program Participation Term (FPPT)." This definition would be provided in conjunction with § 124.110 which deals with the "grandfathering" of firms which were program participants as of September 1, 1988, and which had been subject to terms established in accordance with the provisions of the Small Business Act, as amended by Pub. L. 96–481.

In proposed paragraph (u) SBA would define "Nondisadvantaged individual." This definition would make clear that an individual will be regarded as nondisadvantaged if he/she does not claim disadvantaged status, is not found by SBA to be disadvantaged, or whose disadvantaged status is not relied upon by SBA in qualifyinq a concern for program participation. This definition would also clarify that once an individual has used his/her disadvantaged status to qualify a concern for program participation, that individual would be considered as nondisadvantaged for all other 8(a) program purposes.

SBA is proposing to include a definition for "Non-8(a) business activity target" at paragraph (w). This definition would be used in conjunction with the requirement of the section 8(a) of the Small Business Act, as amended by Pub. L. 100–656, that a concern in the transitional stage of the 8(a) program must meet appropriate targets for the mix of 8(a) and non-8(a) revenues.

SBA is proposing to amend its definition of "Principal place of business" at paragraph (aa). The new definition would require SBA to determine a concern's principal place of business based on two factors: the location of the concern's books and records, and the location at which the individual who manages the concern s day-to-day operations spends the majority of his/her working hours.

Proposed paragraph (kk) would define "Unconditional ownership." This definition would make clear that any arrangement which would serve to allow the benefits of program participation to accrue to nondisadvantaged individuals would not be considered to be unconditional for purposes of these regulations. Unconditional ownership of a business concern by a disadvantaged individual is required as a condition of program eligibility in accordance with § 124.103.

Proposed § 124.101 would describe the process for determining 8(a) program eligibility. Except for concerns owned by Indian tribes, Alaska Native Corporations and Native Hawaiian Organizations, addressed by §§ 124.112 and 124.113, respectively, each applicant concern must meet the requirements set forth in §§ 124.102 through 124.110. Under the proposed procedure, the AA/MSB&COD would approve or decline each application in writing setting forth the basis of his or her determination. If an application were denied based on a negative finding of social disadvantage, economic disadvantage, ownership or control, the applicant would be entitled to appeal to SBA's Office of Hearings and Appeals (OHA) under § 124.210 and Part 134 of this Title. The written decision of OHA would be the final agency action on the matter.

Under these regulations, Program Participants would be required to continue to meet the eligibility criteria of §§ 124.102 through 124.110. Failure to do so would be grounds for termination from the 8(a) program.

Proposed paragraph (c) of § 124.101 would describe SBA's intent to continue to ensure that the benefits of the 8(a) program accrue only to eligible individuals and concerns. It is also SBA's intent to prevent fraud and abuse in the 8(a) program. Towards these ends, paragraph (c) proposes to detail grounds for which SBA would review the eligibility of any applicant concern or Program Participant.

Proposed § 124.102 discusses the requirement that 8(a) applicant concerns and Program Participants qualify as small businesses under § 121.4 of Title 13, Code of Federal Regulations. Proposed paragraphs (a), (c), and (d) restate the requirements of existing paragraphs (a) and (b) of § 124.102 and have been reorganized as proposed paragraphs (a), (c) and (d) for greater clarity. Proposed paragraph (d) would also reference an exemption from the size requirement authorized by Pub. L. 100–656 and set forth in proposed § 124.321 for contracts awarded to joint ventures controlled by eligible Indian tribes. Contrary to past program policy, any such Program Participant would not be required to certify its small business size status under the applicable size standard for each 8(a) contract which it is awarded.

Proposed paragraph (b) of § 124.102 would permit the Division of Program Certification and Eligibility to deny a concern's application for program admission or to request a formal size determination from the appropriate regional office in instances where the Division is unable to determine that an applicant concern qualifies as a small business. The provision would also permit an applicant concern whose application has been so denied to seek a formal size determination from the appropriate SBA regional office and to appeal a negative regional size determination to SBA's Office of Hearings and Appeals, pursuant to SBA's size regulations (§§ 121.8 and 121.11 of this Title).

Proposed § 124.103 describes the ownership requirements of the 8(a) program for applicant and participating concerns, other than those owned by Indian tribes, Alaska Native Corporations and Native Hawaiian Organizations. Ownership requirements for applicant and participating concerns owned by Indian tribes and Alaska Native Corporations are set forth in proposed § 124.112 and for such concerns owned by Native Hawaiian Organizations in § 124.113.

The proposed ownership provisions generally reflect the requirements of existing 8(a) program regulations, the Reform Act or Agency policy as it has developed since the last revision of 8(a) program regulations, which was published in 1986. This proposed section implements a provision of the legislative history of the Reform Act that would require disadvantaged owners to hold unconditional interests in their 8(a) concerns of at least 51 percent. SBA proposes to define unconditional ownership in § 124.100(kk).

This proposed section would also require that, for two years prior to program entry, 51 percent of each applicant concern must be owned by the disadvantaged individuals upon whom 8(a) program eligibility is sought to be based. In unusual cases, SBA is proposing to permit an exception to this rule if it can be demonstrated that the recent transfer of ownership to the disadvantaged individual(s) upon whom eligibility is to be based was an arms length transaction.

Proposed paragraph (a) of § 124.103 would require an applicant concern which is a partnership to reflect the ownership interest of the disadvantaged owner in the concern's partnership agreement. In the case of any applicant concern which is a corporation, proposed paragraph (b) would require that 51 percent of each class of voting stock be owned by the disadvantaged owner(s) and that 51 percent of the aggregate of all classes of stock be owned by the disadvantaged owner(s). Existing paragraph (c) imposes the 51 percent ownership requirement only on voting stock. SBA is proposing to change this requirement to reflect existing program procedures and to ensure that the statutorily required ownership interests are not diluted by issuances of other classes of stock.

SBA also proposes to include in § 124.103 some additional requirements relating to stock and stock options which are intended to prevent circumvention of the statutory requirements regarding 51 percent ownership by one or more disadvantaged individuals. Proposed paragraph (d) would state Agency policy that, in evaluating the ownership interest held by the disadvantaged individual(s), SBA would treat as exercised options to purchase stock or to convert non-voting stock or debentures held by nondisadvantaged individuals or entities not in the same or similar line of business. Proposed paragraph (e) would require that the disadvantaged individual(s) receive at least 51 percent of any dividends of a corporate applicant concern, including distributions upon liquidation. The provision would also require that the disadvantaged individuals upon whom program eligibility is based be entitled to receive 100 percent of the value of each share of stock if sold.

Paragraphs (f) and (g) would restrict disadvantaged and nondisadvantaged owners of one 8(a) concern from simultaneously owning another 8(a) concern. Paragraph (h) would preclude a non-8(a) concern from having an ownership interest in an 8(a) concern. Paragraph (j) would exempt from the ownership limitations of paragraphs (g), (h), and (i) of this section and § 124.104(a)(5) individual ownership interests of less than 5 percent.

Proposed § 124.104 would restate the existing requirements for control and management of an 8(a) concern and would add examples to the requirements for clarity.

Paragraph (a) would impose restrictions on nondisadvantaged individuals who are involved in the management of an applicant or participating concern. This paragraph would prohibit management participation by any such individual or any immediate family member who

resides in his/her household who is a former employer of the disadvantaged owner(s) of the applicant or 8(a) concern, or who was an owner, stockholder, partner, officer, director or manager of another concern in the same or similar line of business as the applicant or 8(a) concern. In addition, such individuals would be prohibited from exercising actual control or having the power to control the applicant or 8(a) concern, from receiving excessive compensation for personal services as directors or employees of the applicant or 8(a) concern, or from having an ownership interest in another 8(a) concern. As noted in the previous section, this ownership restriction would not apply to ownership interests of less than 5 percent. This section would permit written exceptions by the AA/MSB&COD to the former employer prohibition, the excessive compensation prohibition and the prohibition of ownership of 5 percent or more of another 8(a) concern.

Paragraph (e) of § 124.104 would adopt a current procedural requirement that the socially and economically disadvantaged individual(s) upon whom 8(a) eligibility is based control the concern's Board of Directors.

Proposed § 124.105 would set forth regulatory requirements relating to social disadvantage. Much of this proposed section would be identical to existing regulations. The word "considered" has been changed to "presumed" to more precisely state the agency's policy and practice in administering the program. SBA also proposes to expand the definition of Asian Pacific Americans to include individuals with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Kampuchea, Vietnam, Korea, the Philippines, Trust Territory of the Pacific Islands (Republic of Palau, Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, and Samoa). In addition, SBA proposes to include in regulation for the first time a definition of Subcontinent Asian Americans. This definition would reflect current program policy and would include individuals with origins from India, Pakistan, Bangladesh, Sri Lanka. SBA also proposes to add to the definition of Subcontinent Asians, individuals with origins from Bhutan and Nepal. SBA considers that individuals with origins in these countries share similar culture, heritage and physical characteristics. SBA invites public comment on these definitions.

SBA is proposing to amend § 124.106 to reflect the mandates of the Small Business Act as amended by Public Law 100–656, to incorporate current program policy regarding economic disadvantage, and to provide more definitive criteria for determining economic disadvantage. In paragraph (a) of this section, SBA is proposing to set forth the criteria to be used in determining economic disadvantage for purposes of 8(a) program eligibility. In paragraph (b) of this section, SBA is proposing to set forth the criteria to be used in determining economic disadvantage for the subcontracting program authorized under section 8(d) of the Small Business Act, the Small Disadvantaged Business Set-Aside and Evaluation Preference Programs of the Department of Defense authorized by section 1207 of Public Law 99–661, and for any other Federal procurement programs which require SBA to determine disadvantaged status as a condition of eligibility.

For purposes of 8(a) program eligibility for applicant and Participant concerns, SBA is proposing to determine economic disadvantage by analyzing factors in three general categories: the personal financial condition of the individual(s) claiming disadvantaged status, including the individual's access to credit and capital; the financial condition of the applicant concern; and the applicant concern's access to credit and capital. In accordance with current program policy, SBA is proposing to include in its consideration the personal net worth of an individual and his/her spouse, if married. The requirement of a joint financial statement would not apply if the individual is separated from his/her spouse, and there has been a separation of the assets of the spouses recognized by a court of competent jurisdiction.

In accordance with section 8(a)(6) of the Small Business Act as amended by Pub. L. 100–656, SBA is proposing to exclude from its calculations of personal net worth the individual's ownership interest in the applicant or participating 8(a) concern, and the equity in his/her primary personal residence. However, SBA would include any portion of such equity in the primary residence which is attributable to excessive withdrawals from the business concern. SBA is also proposing to list in this section those assets which it will exclude from consideration when calculating the personal net worth of an individual claiming to be an Alaska Native.

In analyzing the business financial condition of an applicant or Participant concern, SBA is proposing to compare the concern to other firms in the same or similar line of business utilizing standard industry averages. In making this comparison SBA will consider a number of factors, including, among others: business assets, revenues, pre-tax profit, business net worth, return on assets, return on investments, return on sales, current ratio, ratio of sales to officers' compensation, and debt to net worth.

Finally, SBA is proposing to continue to measure a concern's access to credit and capital by considering the concern's access to long-term financing, working capital financing, equipment trade credit, raw materials and/or supplier trade credit, and its bonding capability, if required.

For purposes of the section 8(d) Subcontracting Program and other programs requiring SBA to determine disadvantaged status as a condition of eligibility, SBA is proposing to consider the same factors set forth in § 124.106(a) for determining economic disadvantage. SBA would, however, apply these standards to take into account the intent of Congress that partial or complete achievement of a concern's 8(a) program business development goals would not necessarily preclude the concern from participation in other Federal programs designated for socially and economically disadvantaged concerns.

SBA is proposing to amend § 124.107 to incorporate existing program policy, to provide clarification of existing regulation, and to implement section 7(j)(11) of the Small Business Act as amended by Pub. L. 100–656. SBA is proposing to include in this section current policy which requires that SBA look at a number of factors when determining an applicant concern's potential for success. These factors include the technical and managerial experience and competency of the individual(s) upon whom eligibility is based, the financial capacity of the applicant concern and the concern's record for performance on previous Federal and private sector contracts in the primary industry classification in which the concern is seeking 8(a) certification.

Further, in accordance with SBA's current policy, it would generally find that potential for success exists if the applicant concern has been in business in the primary industry classification in which it seeks 8(a) certification for two full years, has a proven performance record and is financially sound. If adopted, this section would also set forth the limited circumstances under which a concern which has not been in

business for two years would be found to possess potential for success.

SBA is proposing to include the new requirement of the Reform Act that with two exceptions, SBA cannot deny an applicant concern program admission due solely to a determination that specific contract opportunities are not available for it. SBA would be authorized to deny program admission if the Government does not procure the types of products or services offered by the concern, or the Government's purchase of such products or services is not in sufficient quantities to support the applicant concern's 8(a) program participation in addition to that of current program participants providing similar products or services.

SBA is proposing to leave paragraph (a) of § 124.108 regarding individual character reviews for 8(a) eligibility purposes essentially the same. SBA is proposing to amend paragraph (b) of this section to include specific reference to the prohibition imposed by section 8(a) of the Small Business Act as amended by Pub. L. 100–656 against SBA employees and former employees holding an ownership interest in an 8(a) concern.

In accordance with the provisions of section 7(j)(11) of the Small Business Act, as amended by Pub. L. 100–656, SBA is also proposing to amend paragraph (c) of this section to provide that an individual or a business concern may only use his/her or its eligibility one time to qualify a concern for 8(a) program participation. The existing exceptions under which a concern could be reinstated for program participation would be eliminated. SBA is also proposing that an individual or concern would be deemed to have used his/her or its eligibility effective upon the date of the concern's approval for program participation. In this section SBA would state that an individual who has used his/her eligibility to qualify a concern for program participation which has exited the 8(a) program is not precluded from holding an ownership interest in another 8(a) concern, but that he/she will be regarded as a nondisadvantaged owner of the second concern.

In this section, SBA is proposing to implement section 7(j)(11) of the Small Business Act, as amended by Pub. L. 100–656 which provides that the transfer of ownership and control of an 8(a) concern to a new individual(s) does not necessarily terminate a concern's 8(a) eligibility. However, in order for the firm to be found eligible for continued participation, SBA would have to find the new individual(s) to be socially and economically disadvantaged. If continued eligibility were found, the Program Term of the firm would continue without change.

SBA is proposing to amend paragraph (d) of § 124.108 to require that at the time of program application, a program applicant whose primary industry classification is in the fields of manufacturing or supply must meet the Walsh-Healey definition for a manufacturer or supplier, and to state that this requirement is in no way affected by the Walsh-Healey exemptions allowed by section 301(b)(C) of Pub. L. 100–656 to a Program Participant in the development stage.

Finally, SBA is proposing to add a new paragraph (e) to § 124.108 which would amend existing SBA policy to allow immediate family members of a disadvantaged owner who reside in the same household to qualify more than one 8(a) concern at the same time so long as the concerns are in separate lines of business, and are separately owned, managed and controlled.

SBA is not proposing to change existing paragraph (a) of § 124.109 which states that brokers and packagers are ineligible for 8(a) participation. Existing paragraph (b) which states that debarred or suspended persons or concerns are ineligible for 8(a) participation would also remain essentially unchanged, but would be proposed as new paragraph (d).

SBA is also proposing to make ineligible for 8(a) program participation new applicant concerns which are franchises. SBA is proposing to exclude franchises from program eligibility because the franchisor-franchisee arrangement, by its nature, gives the franchisor some degree of control over the management, daily business operations and business development of the franchisee. SBA specifically invites public comment on this proposed change from current policy.

SBA is also proposing to specify that non-profit organizations, because they do not meet SBA's definition of small business, do not qualify for 8(a) program participation. Finally, SBA is proposing to revise the regulations to include current program policy which provides that a concern which is owned in whole or in part by another business concern and which relies on such ownership to qualify it as disadvantaged, is ineligible for program participation. Such applicant concern is ineligible because it does not meet SBA's requirement that a concern be at least 51 percent owned by a disadvantaged person(s).

SBA is proposing to amend § 124.110 to reflect the Program Term mandated by section 7(j) of the Small Business Act, as amended by Pub. L. 100–656. SBA is proposing to delete in their entireties existing §§ 124.110(a)–(j) and 124.111, "Fixed program participation term," and "Mechanics for extension of a fixed program participation term," respectively, and to substitute a new § 124.110 titled "Program Term," to reflect the legislated changes. This new Program Term would replace the concept of Fixed Program Participation Term (FPPT) which was established in section 7(j) of the Small Business Act as amended by Pub. L. 96–481. Under the FPPT system, all firms participating in the 8(a) program as of April 21, 1982, and all firms approved for the program subsequent to that date were eligible to negotiate an original FPPT of up to five years. These firms were also eligible to receive one extension not to exceed the difference between the original term and seven years.

In accordance with the new provisions of section 7(j) of the Small Business Act, as amended by Pub. L. 100–656, any concern which was in the program as of September 1, 1988, and did not withdraw or was not terminated or graduated between that date and November 15, 1988, received a new Program Term which was the greater of nine years less the number of years since the award of the concern's first 8(a) contract, or the concern's original Fixed Program Participation Term (FPPT), plus extension, if any, plus eighteen months. It is SBA's interpretation that concerns which had been approved for program participation prior to November 15, 1988, but which had received no 8(a) contract awards as of that date, should be treated as if they were approved on November 15, 1988, and receive a nine year Program Term beginning on that date.

SBA is proposing to add a new § 124.111 to implement section 8(a) of the Small Business Act, as amended by Pub. L. 100–656, which requires each Program Participant to make certain annual submissions to SBA. SBA would be required to examine each Program Participant based on its annual submissions, or on information received by other sources, to determine whether the Participant and its disadvantaged owners continue to meet all eligibility standards, including the standards established for determining economic disadvantage. In accordance with the provisions of the statute, SBA is proposing to provide in § 124.110 that a concern's continued program participation is contingent upon its continuing compliance with the eligibility criteria set forth in §§ 124.101 through 124.109. Failure to continue to meet the standards of eligibility would result in SBA's initiation of termination

or graduation proceedings against the firm.

In this section, SBA is also proposing to implement the statutory provision that SBA examine information provided annually by each Program Participant, and from other sources, to determine whether an excessive amount of funds or other assets has been withdrawn from the Participant for the personal benefit of the disadvantaged owner(s) or that of any person or entity affiliated with such owner(s) to the detriment of the achievement of the targets, objectives, and goals of the concern's business plan. In accordance with the statute, if SBA found such excessive withdrawals, the Agency would initiate termination proceedings against the concern, or require an appropriate reinvestment of funds or other assets and such other actions as the Agency may deem necessary to counteract the detrimental withdrawals.

Proposed § 124.112 would address 8(a) program eligibility requirements for concerns owned by Indian tribes. The term Indian tribe includes Alaska Native corporations organized pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) (see § 124.100(m)). Because tribal ownership is significantly different from ownership by disadvantaged individuals, SBA proposes to establish some separate application requirements for tribally-owned entities. Although tribally-owned entities have been eligible for the 8(a) program for a number of years and most of the separate requirements have been required as a matter of Agency policy and procedure, this is the first time SBA has included such requirements in its regulations.

In addition, where the requirements for concerns owned by Alaska Native Corporations differ from those applicable to tribally-owned entities in general, this section would set them forth separately. These separate requirements are dictated by the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

This regulation would require that an Indian tribe meet the following criteria in order to qualify a concern for 8(a) program participation. Once an Indian tribe has established its disadvantaged status, it would not normally be required to reestablish such status in order to have other businesses that it owns certified for 8(a) program participation. However, the AA/MSB&COD is authorized to require such demonstration of disadvantaged status at any time.

Absent evidence to the contrary, an Indian tribe meeting the definition found in § 124.100(m) would be deemed to be socially disadvantaged. The Indian tribe would also be required to demonstrate that the tribe itself is economically disadvantaged by complying with § 124.105 and by submitting for SBA's consideration the following information: the number of tribal members, the present tribal unemployment rate, the per capita income of tribal members (excluding judgment awards), the percentage of the local Indian population below the poverty level, the tribe's access to capital markets, a list of all enterprises which are wholly or partially owned by the tribe and the primary industry classification of each, a list of members of the tribe which manage or control tribally-owned enterprises or serve as their officers or directors, and the tribal assets as disclosed in a current tribal financial statement. Such financial statement should include all assets, even those which are encumbered or held in trust, and should specifically note which assets are so encumbered or held in trust.

In addition, an Indian tribe must submit as part of its application a copy of its governing document(s) such as its constitution or business charter, evidence of its recognition as a tribe eligible for special programs and services provided by the United States or its state of residence, and copies of its articles of incorporation and by-laws or similar documents as filed with the organizing or chartering authority.

In order to qualify for 8(a) program certification, a concern owned by an eligible Indian tribe must be organized for profit and must waive any sovereign immunity which may attach by reason of tribal ownership. Such concern must also qualify as a small business concern in its primary industry classification as defined for purposes of Government procurement in Part 121 of this Title. Tribal ownership will not, in and of itself, cause the concern to be considered to be affiliated with the tribe or with other entities owned by the tribe. However, two tribally-owned firms may be affiliated on other grounds described in Part 121 of this Title.

Proposed paragraph (c)(2)(iii) would implement the Reform Act provision which permits a tribally-owned participant to be a party to a joint venture which exceeds the applicable size standard on up to two 8(a) contracts. In order to qualify for such exception to the normal size requirements, the joint venture would be required to be 51 percent or more owned and controlled by the tribally-owned Participant, located on the tribe's reservation or tribally-owned land, must perform most of its activities on such reservation or tribally-owned land, and must employ members of the tribe for at least 50 percent of its total workforce. This exception is limited to two 8(a) contracts.

The ownership requirements for tribally-owned entities would be generally the same as those set forth in § 124.103; however, the tribe would be permitted to own more than one 8(a) Participant provided that the Participants are not in the same or similar line of business.

While many of the management and control requirements for tribally-owned concerns are the same as those imposed on other 8(a) Participants by § 124.104, provisions of the Reform Act impose some different control and management requirements for tribally-owned concerns. Tribally-owned concerns must be managed by members of the tribe who possess the same degree of technical experience and expertise as is required of other 8(a) managers under § 124.104(d). The Reform Act authorizes managers of tribally-owned concerns to manage a maximum of two such concerns. In contrast, other 8(a) managers are required to devote full-time to management of the Participant. Under this proposed section, after an individual tribal member has managed two tribally-owned concerns, he/she would be considered to have used his/her 8(a) eligibility and would be precluded from using such eligibility to qualify any other concerns for 8(a) program participation.

Under this proposed section, members of the tribal council would be prohibited from participating in the daily management of a tribally-owned Participant or from serving on its Board of Directors without first receiving written approval from SBA.

This section would require that the primary economic benefits from the Participant accrue to the tribe. Such receipt of economic benefit would be presumed if the concern is located on the tribe's reservation or on other land which was tribally-owned prior to the existence of the concern. A tribally-owned concern would also be required to meet the eligibility criteria set forth in §§ 124.107 through 124.109.

The special provisions relating to Alaska Native Corporations are proposed at paragraph (a)(3) of § 124.112. While most of the requirements are the same as for other Indian tribes, SBA has attempted in this proposed section to reconcile requirements of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1606) (Native Claims Act) with those of the Small Business Act, as

amended by the Reform Act. Therefore, for purposes of evaluating economic disadvantage, SBA proposes to prohibit any consideration of assets or income derived from distributions of the Alaska Native Fund, established by the Native Claims Act, although Alaska Native Corporations would be required to include such assets on their financial statements and specifically identify them as distributions of the Alaska Native Fund.

This proposed section would describe the relationship between Alaska Natives, descendants of Alaska Natives, and an Alaska Native Corporation. In addition, this proposed section would make clear that the non-profit status of an Alaska Native Corporation in no way would affect the requirement that an 8(a) applicant be a for-profit concern. Where the majority of the concern's stock or other ownership interest is owned by the Alaska Native Corporation and holders of its Settlement Stock, this proposed section would deem such concern owned and controlled by the Alaska Native Corporation.

Finally, this proposed section would make clear that an Alaska Native who holds Settlement Common Stock would be treated as a tribal member for purposes of the control and management requirements of this section and § 124.104 and that officers or directors of the Alaska Native Corporation would be treated as members of a tribal council for purposes of the restriction on their daily management and control of the 8(a) Participant without prior written SBA approval.

SBA is proposing to add a new § 124.113 to implement section 8(a)(15) of the Small Business Act as amended by Pub. L. 100–656. In this section SBA would state that concerns owned by Native Hawaiian Organizations are eligible for participation in the 8(a) program and other Federal programs which require SBA to determine social and economic disadvantage as a condition of eligibility.

Proposed § 124.201(a) is designed to allow the SBA to meet the provisions of the law requiring a 90-day time frame for the processing of applications for entry into the 8(a) program and the provision of comprehensive management and technical assistance. Congress suggested using established ratios of business opportunity specialists to serve the 8(a) portfolio, and § 124.201(a) is intended to permit the AA/MSB&COD to maintain appropriate resources to meet these requirements. Section 124.201(b) would state SBA's policy that, except as noted in § 124.201(a), concerns have the right to apply for 8(a) assistance, whether or not there is an appearance of eligibility.

Proposed sections 202 through 205 would provide technical information regarding the application process, the use of representatives in connection with filing 8(a) applications, and the location of the servicing office for a concern approved for 8(a) program participation. SBA is proposing only minor clarifying changes to these sections.

SBA proposes to implement section 8(a)(9) of the Small Business Act, as amended by section 409 of the Reform Act by adding new §§ 124.206 through 124.210. These proposed new sections would describe the rights of an applicant concern or Program Participant, with regard to certain initial Agency decisions, to seek further Agency review including an administrative appeal to an Administrative Law Judge. The Reform Act would authorize an appeal of an initial Agency decision if such decision relates to program graduation, program termination, a denial of a request for a waiver of the restriction against the sale of an 8(a) concern pursuant to § 124.317, or denial of program admission based on social disadvantage, economic disadvantage, ownership, or control.

Section 409 of the Reform Act authorizes a hearing on the record under the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), but at the same time requires that the Agency's proposed action "be sustained unless it is found to be arbitrary, capricious, or contrary to law." Section 409 further amends the usual scheme of APA hearings by requiring that the ALJ's decision be "the final decision of the Administration." Generally, APA hearings call for an ALJ to conduct a factfinding hearing and to make a recommended decision to the Agency program official. That official would then be responsible for making the final Agency decision on the matter.

In order to reconcile the apparent internal inconsistency of section 409 of the Reform Act and to give meaning to the arbitrary and capricious standard, SBA has proposed procedures which require, except in limited circumstances, that the ALJ review the record as it existed when the Agency made its initial decision to determine whether or not the Agency decisionmakers had been arbitrary or capricious. The Administrative Law Judge (ALJ) would be required to remand the case to the AA/MSB&COD where the administrative record does not set forth the reason upon which the Agency's initial decision is based. In limited cases, where the applicant concern or Participant first makes a showing that the decision was made with bad faith or improper behavior on the part of SBA, the ALJ may permit the introduction of new or additional evidence, including testimony, and appropriate discovery on the issue. In order to make the required showing, the applicant concern or Participant would be required to present credible evidence not mere allegations to the ALJ. The Agency would be afforded an opportunity to respond to the showing prior to a decision on the introduction of new or additional evidence.

The proposed regulation would make clear that the burden of proof remains with the applicant concern or Participant regardless of the result of the showing presented by the applicant concern or Participant.

In order to afford the program applicants and Program Participants due process consistent with the Reform Act provisions, these proposed procedures would permit applicant or participating concerns to submit new evidence to the 8(a) program officials either through a reconsideration procedure for declined program applicants (Denial of Program Admission, § 124.206) or through a procedure affording Participants two separate opportunities to demonstrate why program termination or graduation should not occur (Program graduation, § 124.208 or Program termination, § 124.209).

Section 124.206 sets forth the procedures relating to approval and decline of applications for 8(a) program admission. An application would be considered first by the Division of Program Certification and Eligibility which would make a recommendation on program certification to the AA/MSB&COD. The AA/MSB&COD is authorized to approve or decline such applications and, unless appealed to the Office of Hearings and Appeals under § 124.210, the AA/MSB&COD's decision would be the final agency determination.

An applicant which has been denied program admission would be afforded an opportunity to seek reconsideration. As part of the reconsideration process, the applicant concern could change or correct the circumstances which caused the initial decline and could also submit new evidence to supplement the written record. The Division of Program Certification and Eligibility (Division) would review any additional information along with the existing record and would make a recommendation to the AA/MSB&COD. The AA/MSB&COD would consider the complete record and would render a decision. Such decision would become

the final Agency decision within 30 days if not appealed to the Office of Hearings and Appeals under § 124.210.

SBA is proposing to establish a new § 124.207 which, in accordance with the provisions of section 7(j)(10) of the Small Business Act as amended by Pub. L. 100–656, will enumerate the means by which a participant concern may leave the 8(a) program. These means are: voluntary withdrawal, expiration of the concern's Program Term, graduation, and termination.

Proposed § 124.208 sets forth SBA's procedures by which a Program Participant could be graduated from the 8(a) program. SBA would initiate such procedures when it determines that a Program Participant has substantially achieved the targets, objectives and goals described in its business plan.

Under the proposed procedures, SBA would notify the Participant of its intent to initiate program graduation in a letter of notification, which would set forth findings for every material issue relating to the basis for program graduation and the reasons for each finding. The Participant would be afforded 45 days to respond to the letter with written information explaining why the proposed basis for graduation is unwarranted.

Following the response period, the Division of Program Certification and Eligibility would review the written record of the proposed graduation, including any information submitted by the Participant. The Division would notify the Participant of its proposed actions, either to recommend program graduation to the AA/MSB&COD or not. In instances where the basis for program graduation continues to exist following the first response period, the Participant would be afforded an additional 45 day period to submit any further written information which would rebut the proposed graduation.

In those cases, following the second response period, the Division would consider the entire record relating to the proposed program graduation. If the Division Director determines that program graduation is not warranted, he/she would so inform the Participant. If the Division Director determines that graduation is appropriate, he/she would recommend in writing to the AA/MSB&COD that the Participant be graduated.

Upon recommendation of the Division Director, the AA/MSB&COD would consider the proposed graduation and the record relating to it. If the AA/MSB&COD determines that program graduation is not appropriate, he/she would so notify the Participant. If he/she determines that graduation is warranted, he/she would issue a Notice of Program Graduation to the Participant, which sets forth findings for every material issue relating to the basis of the program graduation along with specific reasons for each finding. The Notice would also advise the Participant of its right to appeal the decision to the Office of Hearings and Appeals under § 124.210 and Part 134 of this Title. This decision would become the final Agency decision within 45 days from the date that the Notice was mailed if the Participant chooses not to appeal to the Office of Hearings and Appeals within that period.

After the effective date of program graduation, a concern which has been graduated from the 8(a) program would no longer be eligible to receive any 8(a) program assistance. Program graduation does not, however, affect the concern's obligations to complete contracts previously awarded under section 8(a) of the Small Business Act.

Proposed § 124.209 would address program termination prior to the expiration of a Participant's Program Term. SBA would be authorized to seek program termination if good cause exists. The listing of examples of good cause would be illustrative and not all inclusive. Generally, it would restate those examples of good cause included in the existing regulations (*see,* § 124.112 of existing regulations).

Proposed program termination procedures would be similar to those proposed in § 124.208 for program graduation. For program termination, the letters of notification and the Notice of Termination would set forth SBA's intent to terminate, and findings for every material issue relating to the grounds upon which such termination would be based and the reasons for such findings. Otherwise the procedures would be identical to those proposed for program graduation.

Proposed § 124.210, in conjunction with Part 134 of this Title, as proposed to be amended by conforming amendments, would describe the appeal rights of an applicant concern or Program Participant relating to certain Agency determinations, as required by section 8(a)(9) of the Small Business Act, as amended by section 409 of the Reform Act. These determinations would be program graduation, program termination, denial of a request for a waiver from the prohibition against the sale of an 8(a) Participant pursuant to § 124.317, and denial of program admission based solely on a negative finding of social disadvantage, economic disadvantage, ownership or control.

Within 45 days from the date that a Notice of such Agency determination is mailed, an applicant or Participant concern could initiate an appeal by filing a petition in accordance with Part 134 with SBA's Office of Hearings and Appeals and concurrently serving the AA/MSB&COD with a copy of the petition and all its attachments. In addition to meeting the requirements of § 134.11(a), a petition would be required to contain reasons why the Agency's determination is alleged to be arbitrary, capricious or contrary to law with specific reference to the determination and the record supporting such determination.

Appeal proceedings would be conducted by an Administrative Law Judge in accordance with this section and with Part 134 of this Title. An ALJ selected to preside over an appeal would be precluded by statute from accepting jurisdiction over any of the following: (1) An appeal, which does not on its face allege facts that if proven to be true would warrant reversal or modification of the Agency determination; (2) an appeal which is untimely filed or otherwise not filed in accordance with this section or Part 134 of this Title; or (3) an appeal, the subject of which has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

The determination of the Agency would be sustained unless found to be arbitrary, capricious or contrary to 1aw. The decision of the ALJ would be the final Agency decision. In instances where the ALJ, in his/her discretion, determines that the record of the determination is insufficiently complete to decide whether the determination was arbitrary, capricious or contrary to law, the ALJ would be permitted to remand the case for further consideration by the program officials. Unless the convenience and necessity of the parties would require otherwise, any hearing relating to an appeal pursuant to paragraph (a) of this section would be conducted in the Washington, DC area.

SBA is proposing a new § 124.211 dealing with the suspension of program assistance to 8(a) Participant concerns. This section would replace current § 124.113. The proposed section would be essentially the same as the current section except that changes are proposed which would reflect the proposed changes in procedures for the handling of termination actions. SBA is also proposing to make the decision of the Administrative Law Judge the final Agency decision in any hearing held regarding a program suspension action. Finally, in paragraph (k), SBA is proposing to provide regulatory notice of

current Agency policy that SBA does not recognize the concept of de facto suspension. In accordance with this policy, unless a concern has been formally suspended from the 8(a) program by SBA it will not be eligible for reinstatement of any portion of its program term.

Proposed § 124.301 addresses business plans. Proposed paragraph (a) would set forth the general requirement that each 8(a) Program Participant develop and submit to SBA a comprehensive business plan, setting forth the Participant's business targets, objectives, and goals. SBA must approve the business plan before the Participant is eligible to receive 8(a) contracts.

Proposed paragraph (b) would require the business plan to contain the primary industry classification relevant to the 8(a) concern and related secondary Standard Industrial Classification (SIC) code designations and would permit the Participant to receive only those 8(a) contracts which are classified under SIC codes approved in its business plan. However, a Participant would be free to pursue contracts classified under SIC codes not contained in its business plan through Federal procurement procedures other than 8(a).

Proposed paragraph (c) of § 124.301 would set forth the required contents of the business plan. The plan would include analyses of market potential, competitive environment, the concern's prospects for success, the concern's strengths and weaknesses, business development goals, estimates of contract awards needed to meet those goals (both 8(a) and non-8(a)), and such other information as SBA may require. These requirements are based on section 7(j)(10) of the Small Business Act, as amended by section 205 of the Reform Act.

Proposed § 124.302 addresses the procedures and requirements for annual review and modification of the business plan. The Participant's business plan would be required to be reviewed annually with the Business Opportunity Specialist. The annual review of a participant's business Plan would generally occur within 15 working days before or after the anniversary of the firm's certification of 8(a) eligibility. During the annual review, the Participant would be required to forecast its needs for 8(a) and non-8(a) contract awards during the next program year and succeeding program year.

This section would also set forth the circumstances under which changes in the SIC code designations stated in a Participant's business plan would be approved. SBA's current regulations permit SIC code changes only under narrow circumstances where (1) an additional SIC code designation is needed to correct significant limitations in 8(a) contract support due to procuring agency actions beyond the control of the 8(a) concern, and (2) the Administrator determines that, absent a SIC code change, the 8(a) concern would be unable to achieve reasonable 8(a) development. Congress was concerned that SBA's existing regulation could limit a Participant's business development by restricting natural lines of business progression. The proposed rule would expand the circumstances under which an 8(a) concern could request a SIC code change in accordance with section 8(a)(7)(B), as added by section 303(g) of the Reform Act and as a result of SBA policy determinations. The 8(a) concern could request such a change if the requested SIC code is related to the primary industry of the concern and represents a logical business progression for the concern; the 8(a) concern has demonstrated capacity and capability to perform in the requested SIC code; and other applicable eligibility criteria are met. The proposed regulation also provides for SIC code additions or changes when SBA makes an error.

Finally, § 124.302 would require each Program Participant in the transitional stage of program participation (fifth to ninth years of program participation) to annually submit a transition management plan outlining the specific steps it will take to promote profitable business operations after graduation. This section would implement section 7(j)(10), as amended by section 205 of the Reform Act and section 8(a)(7)(B), as added by section 303(g) of the Reform Act.

Section 124.303 would describe the stages of a Participant's program participation and the assistance available in each of the stages, provided that qualifying criteria are met. The Program Term would be divided into two stages—a developmental stage of four years and a transitional stage of five years. Program Participants in the developmental stage would be eligible for sole source and competitive 8(a) awards, financial assistance under a new loan program established in lieu of Business Development Expense (BDE), a maximum of two exemptions from the requirements of the Walsh-Healey Act, a maximum of five exemptions from the Miller Act's bonding requirements, financial assistance for skills training or upgrading of employees of 8(a) concerns, the transfer of technology or surplus property owned by the United States to Participants, and training sessions to enhance the ability of 8(a) concerns to compete in the open marketplace.

Participants in the transitional stage of program participation would be eligible for the same assistance available to firms in the developmental stage with the exception of the Walsh-Healey and Miller Act exemptions and the financial assistance for employees of 8(a) concerns. In addition, such Participants would be eligible to receive from procuring agencies, assistance in forming joint ventures, leader-follower arrangements and teaming agreements, as well as training and technical assistance in transitional business planning. This section would implement paragraphs (12), (13) and (14) of section 7(j) of the Small Business Act, as added by section 301 of the Reform Act.

Proposed § 124.304 would set forth the requirements and procedures for obtaining an exemption from the requirements of the Walsh-Healey Act. The exemption would enable a Participant to enter into a contingent agreement to acquire machinery, equipment, facilities or labor needed to perform an 8(a) contract with an anticipated contract value under $10,000,000. An exemption would be granted only where the contract to which the exemption would apply is consistent with the business development goals set forth in the Participant's business plan and where SBA determines that the Participant is fully capable of performing the contract. Participants would be eligible to receive a maximum of two such exemptions. SBA's authority to grant these exemptions expires on October 1, 1992. This section would implement section 7(j)(13)(C) of the Small Business Act, as added by section 301 of the Reform Act.

Proposed § 124.305 would set forth the requirements and procedures for obtaining exemptions from the requirements of the Miller Act that bid and performance bonds be obtained on Federal construction contracts. Paragraph (a) would set forth the general policy for granting such exemptions. An exemption would be granted only where SBA determined that an 8(a) concern was unable to obtain the requisite bonds from a surety. For purposes of this proposed section, the term surety means an entity that is in the business of issuing bonds, not an entity that would be willing to give a bond on a single contract only. Proposed paragraph (b) would set forth the eligibility requirements and conditions which would have to be met before a Participant could receive such an exemption. Proposed paragraph (c) would set forth the limitations on the

exemptions, including the limits to SBA's liability, maximum dollar amount of the contract ($3,000,000), and maximum number of exemptions a Participant may receive during its Program Term (5). Proposed paragraph (d) would set forth the measures to be taken to protect the interests of third parties such as persons providing material and labor to the Participant, including the establishment of a special bank account into which the procuring agency would deposit all payments relating to the performance of the contract. In addition, the Participant would be required to notify all persons supplying it with materials or labor, including its own employees, that it has received an exemption from the Miller Act's bonding requirements pursuant to this section and would have to receive written acknowledgment of the receipt of such notification. Proposed paragraph (e) would set forth the procedures for obtaining the exemptions, including attainment of approval by the procuring agency. The Miller Act exemptions are authorized only until October 1, 1992. This section would implement section 7(j)(13)(D) of the Small Business Act, as added by section 301 of the Reform Act.

Proposed § 124.306 would set forth the requirements and procedures for obtaining financial assistance for skills training or upgrading of employees or potential employees of Program Participants in the developmental stage of program participation. In order to receive such assistance, the Program Participant would be required to document that other cost-free or subsidized training programs are not available or suitable. This section would also limit the types of training providers which could be utilized and would impose certain dollar and time limitations on the training. Finally, this section would require the Participant to give adequate assurance that it would employ the trainee or upgraded employee for at least six months after training or upgrading has been completed and would require the trainee or upgraded employee to give a similar assurance. If the employee does not remain with the Participant for that period, the violating party would be required to reimburse SBA for the training costs and would be ineligible for further assistance under this section, subject to a limited exception when such penalties would be inequitable, such as when the spouse of the employee being trained is transferred. This section would implement section 7(j)(13)(E) of the Small Business Act, as added by section 301 of the Reform Act.

Proposed § 124.307 would address contractual assistance to Program Participants generally. SBA's statutory authority to contract with procuring agencies and subcontract the performance to 8(a) concerns is set forth in this proposed section. Such subcontracts may either be sole source awards or awards attained through competition reserved for eligible 8(a) concerns. Prior to enactment of the Reform Act, 8(a) contracts were awarded only on a sole source basis. Pursuant to section 303 of the Reform Act, 8(a) contracts valued at over certain dollar amounts must be competed as of October 1, 1989. *See* proposed § 124.311. This section would also clarify that admission into the 8(a) program does not bestow a right to receive 8(a) contracts and that SBA does not guarantee any particular level of contract support to a Participant by approval of its business plan.

Proposed § 124.308 would set forth the procedures for obtaining and accepting procurements for the 8(a) program. Proposed paragraph (a) would provide that, in agencies where they are resident or have liaison responsibilities, Procurement Center Representatives (PCRs) will screen proposed procurements for potential 8(a) contracts.

Paragraph (b) would set forth the mechanisms for identifying a requirement for possible 8(a) award and the procedures to be followed once a requirement is identified. If SBA determined a requirement to be suitable for the 8(a) program, it would verify the SIC code designated for the requirement and request that the requirement be offered to the 8(a) program. If the anticipated value of the requirement is above the statutory thresholds set forth in proposed § 124.311, the SBA would request that it be offered as a competitive contract. If the requirement was below such thresholds, SBA would request that it be offered either as an open requirement or on behalf of a particular Participant.

Paragraph (c) of § 124.308 would set forth the required contents of the offering letter, the vehicle used to offer a requirement formally to the 8(a) program. The information which must be contained in the offering letter would include a description of the work to be performed or items to be delivered, the estimated time period for performance, the type of contract to be awarded, such as firm fixed price or cost reimbursement, and information showing that acceptance of the requirement for the 8(a) program would not adversely affect another small business. In cases where the procuring agency identifies a particular 8(a) concern for consideration, the agency would have to provide justification for its choice, such as that the particular concern self-marketed the requirement. This information is necessary so that SBA can make an informed decision as to whether the requirement is suitable for the 8(a) program, whether it must be competed under the requirements of the Reform Act, and, if it is to be a sole source contract, the appropriate 8(a) concern to perform the contract.

Proposed paragraph (d) of § 124.308 would set forth the procedures for accepting a requirement for the 8(a) program. Upon receipt of a procuring agency's offer, SBA would determine whether to accept the requirement for the 8(a) program and would transmit that decision to the procuring agency within 15 working days of receipt of the offer, unless granted an extension by the procuring agency. In the case of a local buy requirement to be accepted on a sole source basis, SBA would accept the offer both on behalf of the program and on behalf of a specific Participant. In the case of a national buy requirement, SBA would accept the offer for the program generally and advise the procuring agency that the appropriate field office will designate a Participant for performance. In the case of a competitive requirement, it would accept the requirement for the program generally to be competed among eligible 8(a) Participants.

Proposed paragraph (e) of § 124.308 would address sole source awards where the procuring agency nominates a specific Program Participant. Proposed paragraph (e)(1) would provide that, once a procurement is deemed suitable for acceptance as a sole source contract, it will normally be accepted on behalf of the Participant recommended by the procuring agency as long as certain specified conditions are met. The SBA must determine that the procurement is consistent with the Participant's business plan, that the Participant is responsible, and that award of the contract would not result in the Participant exceeding its approved 8(a) business support level or the business mix requirements established under § 124.312. Paragraph (e)(1) would implement section 8(a)(1)(A) of the Small Business Act, as added by section 303 of the Reform Act.

Proposed paragraphs (e)(2) and (e)(3) would describe the procedures SBA would follow after it determines whether or not an appropriate match exists with the nominated concern. If SBA determines an appropriate match

does exist, it would send an acceptance letter, advising the procuring agency whether or not SBA will participate in contract negotiations or whether it will authorize the procuring agency to negotiate directly with the identified Program Participant. If SBA determines that an appropriate match does not exist (based on the factors set forth in paragraph (e)(1)), it would select an alternate 8(a) concern and so advise the procuring agency.

Proposed paragraph (f) of § 124.308 would address the procedures to be used in circumstances where a requirement is offered for the 8(a) program but no particular Program Participant is nominated for award—so-called "open requirements." In such a case, if the requirement is a local buy item, the contract would be referred to the SBA district office in the district where the work is to be performed or items delivered. If no 8(a) concern in that district is deemed qualified to perform the contract, it would be considered for other 8(a) concerns located in that SBA region or, if appropriate, other regions. It is also possible that a specific contract could be offered to an adjacent district office in another SBA Region before being considered for the rest of the Region if deemed appropriate by SBA. If the contract is a national buy item, it would be referred to SBA s Central Office for allocation.

This section would also address the circumstances where SBA must select a Participant for possible award from among two or more eligible and qualified Participants. In such a case, the selection would be based on consideration of relevant factors such as the business developments needs, financial condition, and management and technical ability of the eligible concerns.

Proposed paragraph (f) would also require SBA to promote the equitable geographic distribution of 8(a) sole source contracts to the maximum extent practicable. This paragraph would implement section 8(a)(16)(B) of the Small Business Act, as added by section 303 of the Reform Act.

Proposed paragraph (g) of § 124.308 would provide that SBA would not authorize formal technical evaluations for sole source contracts. This is consistent with Congressional intent. The legislative history of the Reform Act contemplates competition among eligible 8(a) Participants for requirements that do not meet the dollar threshold amounts set forth in proposed § 124.311 where the procuring agency desires a technical evaluation of several firms.

In addition, SBA recognizes that formal technical evaluations may be costly for 8(a) concerns. If formal technical evaluations are limited to competitive 8(a) awards, 8(a) concerns could elect whether to participate and would have a chance of receiving the award. If a procuring agency wishes to conduct technical evaluations among more than one 8(a) concern, it would be required to request that the requirement be a competitive 8(a) award. The agency could request a formal two-step sealed bid procurement under the Federal Acquisition Regulations (FAR), or a standard negotiated competitive procurement.

Proposed § 124.309 would address the circumstances under which the SBA would decline to accept for award a requirement not previously in the 8(a) program. This section would implement SBA's policy that the Agency will not accept a requirement for the 8(a) program if such acceptance would have an adverse impact on other small business programs or on an individual small business.

Proposed paragraph (a) of § 124.309 would provide that SBA will not accept a requirement where a solicitation has previously been issued. SBA could, however, accept a requirement under extraordinary circumstances; for example where a solicitation was issued but withdrawn because of inadequate response or in an emergency, where the agency would not have time to complete the requirement and could justify a sole source award under the FAR.

Proposed paragraph (b) of § 124.309 would provide that SBA would not accept a requirement where the procuring agency has expressed publicly a clear intention to reserve the procurement as a small business or small disadvantaged business set-aside; for example, a notice of intent to set aside a procurement published in the Commerce Business Daily and inviting a response from interested small businesses. The AA/MSB&COD could, however, permit the acceptance of the requirement under extraordinary circumstances. For instance, acceptance would be permitted where the procuring agency had made the decision to set aside a requirement for the 8(a) program and a notice was subsequently mistakenly sent out. Even in such a case, SBA would only accept the procurement if the procuring agency acknowledged and documented that the notice was a mistake.

Proposed paragraph (c) would set forth the general rule that SBA will not accept a requirement for the 8(a) program where such acceptance would have an adverse impact on other small business programs or an individual small business, whether or not the affected small business is in the 8(a) program. This policy continues SBA's current policy but expands the present regulation to clarify that the adverse impact policy does not apply to "new" requirements; *i.e.*, ones that have not been previously procured by the relevant procuring agency. In order for a concern to be adversely impacted by a requirement's acceptance for the 8(a) program, that concern must have previously performed the requirement. In the case of new requirements, there is no small business which will lose the requirement.

Section 124.109(c) would also provide that SBA will presume adverse impact to exist when a small business concern performed a specific requirement for at least 24 months, is currently performing the requirement or finished such performance within thirty days of the procuring agency's offer of the requirement to the 8(a) program, and the estimated dollar value of the award is 25 percent or more of its most recent annual gross sales (including those of its affiliates). Under this presumption, SBA would consider a small business concern that meets the presumption's requirements as being adversely impacted absent evidence to the contrary. SBA could also determine that adverse impact exists apart from the above presumption. Such determinations would be made on a case by case basis.

Proposed paragraph (d) would set forth the circumstances under which SBA would release a requirement from the 8(a) program for award through competition outside the 8(a) program. It would do so only in limited circumstances where an 8(a) sole source contract is being performed by a Program Participant whose Program Term would expire prior to contract completion or by a former Program Participant whose Program Term expired less than one year before the date of the proposed contract release. In making a determination whether to release the requirement, SBA would weigh the importance of the contract for the current or former Participant's stability and business development needs against the needs of other current 8(a) Program Participants. In addition, SBA would not release a requirement where it would deplete or seriously reduce the pool of similar types of contracts to be awarded through the 8(a) program. Finally, SBA would release a requirement only upon written request by a particular affected current or former Program Participant.

Proposed § 124.310 would set forth the requirements for approval of lower tier subcontractors on 8(a) contracts. Such requirements would include advance approval, compliance with the performance of work requirements required by section 921 of Pub. L. 99–661, maintenance of an arms length relationship with the subcontractor, and control of the performance of the contract by the 8(a) concern. SBA would also have to determine that the proposed subcontracting arrangement is not an attempt to circumvent SBA's size regulations. These requirements are to prevent fronts and to insure that the benefits of 8(a) contracts inure primarily to 8(a) concerns.

Proposed § 124.311 would set forth the procedures to be used in conducting any competition among eligible 8(a) concerns authorized by Pub. L. 100–656. The Small Business Act, as amended, mandates that any contract offered to the 8(a) program be awarded on the basis of competition among eligible 8(a) concerns if: (1) There is a reasonable likelihood that at least two eligible 8(a) concerns will submit offers, and (2) the anticipated award price of the contract, including options, will exceed $5,000,000 for contracts assigned manufacturing SIC Codes and $3,000,000 for all other contracts. This section of the proposed regulations would authorize competition below the threshold dollar figures in limited instances, including where technical competitions are appropriate. Competition in these instances would require the approval of the AA/MSB&COD. The AA/MSB&COD would deny a request by a procuring agency to compete an 8(a) requirement having a dollar figure below the applicable threshold if the requirement was previously offered to the 8(a) program as a sole source award, and the AA/MSB&COD concludes that the reason for such request is the procuring agency's failure to reach agreement on price during negotiations with the selected 8(a) concern. A sole source 8(a) award would be authorized above the threshold dollar figure where (1) SBA determines that there is not a reasonable expectation that two eligible Program Participants will submit offers at a fair price, but it is known that there is an eligible Participant in the portfolio which can perform the requirement at a fair price, or (2) the requirement would be awarded to an 8(a) concern owned and controlled by an economically disadvantaged Indian tribe. A procuring agency may request SBA to award a sole source contract that is above the applicable threshold figure. SBA will determine, after consulting with the procuring agency, whether the statutory rule of two can be met for the specific requirement. If SBA believes that it can be met, it will not accept a requirement above the applicable threshold figure for award as a sole source 8(a) contract. Where a tribally-owned concern is seeking a requirement which exceeds the applicable threshold figure, either the concern or the procuring agency could request SBA to award a sole source 8(a) contract above the threshold figures. In making a determination as to whether to award such a contract on a sole source basis, SBA would weigh the developmental needs of the tribally-owned concern against the needs of other eligible concerns in the portfolio for the contract.

Proposed § 124.311(h) would authorize SBA to restrict the award of competitive 8(a) contracts to certain types of 8(a) concerns. Only those Participants that have the SIC Code of the requirement in their approved business plan would be eligible to receive a competitive 8(a) award. SBA would also be authorized to restrict 8(a) competitions among Participants in specified stages of the program and, for local buy requirements, geographically. For example, SBA could require that only those Participants in the developmental stage of program participation would be eligible for award of a specific requirement.

Proposed § 124.311(f) would identify the procedures under which an 8(a) competition would be conducted. SBA specifically requests comments from Federal agencies as to the practical application of this section. The competition would be conducted by the procuring activity. However, SBA's approval of the competition criteria to be used would be required. In a sealed bid procurement, the procuring agency would identify the low bidder to SBA. In a negotiated procurement, the procuring agency would identify all offerors. It is contemplated that SBA would then determine which Participants are eligible for award. In making such a determination, SBA would look at the following: (1) Whether the firm had the SIC Code identified in the solicitation in its approved business plan; (2) if the procurement is to be restricted within a particular stage of program participation or a particular geographical area, whether the firm is within the required stage of development or location; (3) whether it appears that the firm is small for the applicable SIC Code; (4) whether the firm's non-8(a) business activity targets are being met; and (5) whether the firm has exceeded its approved level of 8(a) support. SBA would identify all offerors which are eligible for award. In a sealed bid procurement, if the initially identified concern is determined to be ineligible for award, the procuring agency would identify the next low bidder, and so on until an eligible Participant is identified. In a negotiated procurement, the proposals of all firms identified as eligible for award by SBA would be evaluated by the procuring agency. Negotiations and/or discussions would be authorized with any of these firms. The procuring agency would then identify the selected firm to SBA. SBA would generally award an 8(a) subcontract to the firm selected by the procuring agency. It would be the rare instance when SBA would not do so. The contracting arrangement for a competitive 8(a) award would be the same as that for a sole source 8(a) award (i.e., the procuring agency and SBA would enter a prime contract and would subcontract the performance of the requirement to the selected 8(a) concern).

Proposed § 124.311(g) would prohibit any party from challenging the eligibility of a Participant for an 8(a) award. A challenge could not be made either to SBA or to any other administrative forum as part of a bid or other contract protest. Anyone with information concerning the eligibility of a Participant to continue participation in the 8(a) program could submit such information to SBA and SBA would review it in accordance with proposed § 124.111(c). Determinations as to a firm's eligibility to participate in the 8(a) program is statutorily vested in SBA and should not be undertaken by another administrative body. Therefore, SBA does not believe that bid or other contract protests at GAO, GSBCA, ASBCA, etc. should be able to attack a Participant's 8(a) eligibility status.

Proposed § 121.312 would require a firm to establish targets of non-8(a) business activity during its participation in the 8(a) program. During the developmental stage of program participation (program years 1–4), a firm would be required to make substantial and sustained efforts to meet the targeted dollar levels of non-8(a) revenue set forth in its business plan. A fixed percentage of a Participant's total revenue during each program year in the transitional stage of program participation (program years 5–9), would be required to be derived from non-8(a) business. This proposed section would specify varying ranges of non-8(a) business that a Participant would be required to achieve, depending upon its year in the program.

As previously discussed, an applicant must have the potential to succeed in

business in order to be certified for 8(a) participation. One way an applicant can demonstrate its prospect for success is to have a track record of being in business for at least two years. It is contemplated that most firms entering the program would have such a two year track record. Proposed § 124.312(b)(2) would require a newly certified Participant to make maximum efforts to maintain its existing non-8(a) business base after certification. SBA understands that a firm may lose certain business due to no fault of its own. However, SBA seeks to discourage total reliance on the 8(a) program and could commence termination proceedings if a Participant made no attempts to maintain current or obtain new non-8(a) business.

A firm in the developmental stage of program participation could not receive 8(a) contract support (whether it is awarded as a sole source contract or through competition) in excess of 125 percent of the 8(a) support level established in its approved business plan. The Participant's support level could be increased, but not solely to enable the firm to receive an additional 8(a) contract that it has identified. In the past, SBA has at times approved requests for increases in 8(a) support levels in order to award additional 8(a) contracts to the concern. A request for such an increase may have been approved whether or not the firm could increase its non-8(a) business simultaneously.

This practice brought about two results. First, it gave little meaning to a firm's approved 8(a) support level. A firm could seek 8(a) contracts in excess of its approved 8(a) support level, knowing that SBA might increase the support level if requested. Second, it encouraged a reliance on the 8(a) program. It was possible that a concern could request, and receive, an increase in its 8(a) support level that resulted in the entire capacity of the business being devoted to the performance of 8(a) contracts. This would have made it difficult for a firm to make the transition into the competitive marketplace upon leaving the program.

The proposed regulation would permit a Participant to request, and receive, an increase in its approved 8(a) support level, but only if it can demonstrate that it has increased its capacity and capability to the point that its currently approved 8(a) support level is inappropriate. In addition, the increased capacity and capability must be to the point that any approved increase in 8(a) support would not take up the entire increased capacity of the concern (i.e., after increasing its 8(a) support level, the Participant would still be able to perform additional non-8(a) contracts). A request for an increase in a Participant's approved 8(a) support level could occur only once during a program year other than at the date of its annual review. The proposed regulation would require such a request to be made at the mid-year point of a Participant's program year. Specifically, such a request would be required to be made within 15 calendar days (either before or after) of the six month date of the Participant's preceding annual review. This requirement is intended to alleviate SBA's concern that in the past requests for increases in contract support could be made, and granted, at will throughout a program year.

In measuring whether a Participant has reached its approved 8(a) support level during any program year, the proposed regulations (proposed § 124.312(b)(6) for firms in the developmental stage and proposed § 124.312(c)(9) for firms in the transitional stage) would add the dollar value of the base year of all contracts awarded during that program year (excluding options on such contracts which would be exercisable in one or more subsequent program years) to the dollar value of all options and other modifications affecting price that are exercised during that program year. Options and modifications would be counted in the program year that they are exercised. If an option or modification were exercised in the same program year in which the base year of an 8(a) contract was awarded, then both the base year and option/modification would be counted in that program year. If, however, an option or modification is exercised in a subsequent program year, then only the base year of the 8(a) contract would be counted in determining 8(a) support received. In such a case, the dollar value of the option or modification would be counted in the program year in which the option/modification was exercised.

In order to determine a Participant's reliance on the 8(a) program and whether its non-8(a) business activity targets are being met, proposed § 124.312(b)(7), for firms in the developmental stage, and proposed § 124.312(c)(10), for firms in the transitional stage, would require Participants to submit quarterly financial statements separating 8(a) and non-8(a) revenues.

Proposed § 124.312(c) would set forth the non-8(a) business activity targets that Participants would be required to meet during the transitional stage of program participation. Participants approved for participation on or after November 15, 1988 and Participants with more than five years remaining in the program as of August 15, 1989 would be subject to the non-8(a) business activity targets set forth in proposed § 124.312(c)(4). Participants with five years or less remaining in the program as of August 15, 1989 would be subject to modified non-8(a) business activity targets set forth in proposed § 124.312(c)(5).

Proposed § 124.312(c)(2) would require that during the transitional stage a Participant's approved 8(a) support level would be set with the firm's history of 8(a) and non-8(a) business and these business activity targets in mind. Once established, a firm's support level could be increased only if the firm demonstrates that the receipt of such increased support would not conflict with the business activity targets. Similar to the requirement for firms in the developmental stage, a request for an increase in 8(a) support by a Participant in the transitional stage could be made only once during a program year other than at the annual review (i.e., at the mid-year point of the program year).

The Business Opportunity Development Reform Act of 1988 required SBA to establish non-8(a) business activity targets for Participants in the transitional stage of program participation. It did not, however, provide definitive guidelines for SBA to use in establishing these targets. Similarly, the conference report to the Reform Act, H.R. Rep. No. 1070, 100th Cong., 2d Sess. 62–63 (1988), provides general guidance, but is not explicit as to how SBA should implement this provision. The conference report states that the targets established "*should generally* require firms in the fifth and sixth years to show 25% of revenues from sources other than 8(a) contracts, while in the seventh and eighth years such business revenues should *move toward* 50%," and, in the final year of program participation, "firms should *strive to achieve* at least three-fourths of their business revenues from sources other than 8(a) contracts." SBA has taken these general parameters and has refined them in order to have targets which firms are more likely to meet.

Instead of grouping years 5 and 6 and years 7 and 8 together (i.e., having the same business activity targets), the proposed rule would set different business activity targets for each year in the transitional stage of program participation. SBA felt that a requirement of approximately 25 percent

non-8(a) business in year 6 followed by a requirement of approximately 50 percent non-8(a) business in year 7 would be unworkable. A Participant that barely meets the target in year 6, and is thus not subject to remedial measures, could have difficulty in reaching the target in year 7. SBA believes that a more gradual progression away from 8(a) reliance is preferable. In addition, the proposed rule would set ranges of acceptable non-8(a) business revenues instead of requiring a specific minimum level of non-8(a) business. SBA believes that the attainment of non-8(a) business by Program Participants within a specified range is more realistic than minimum level requirements.

For firms entering the program on or after November 15, 1988 and Participants with more than five years remaining in the program as of August 15, 1989, the proposed rule would set the following non-8(a) business activity targets: 15–25 percent non 8(a) business in the first year in the transitional stage; 25–35 percent non-8(a) business in the second year in the transitional stage; 40–45 percent non-8(a) business in the third year in the transitional stage; 50–55 percent non-8(a) business in the fourth year in the transitional stage; and 65–75 percent non-8(a) business in the fifth year in the transitional stage (the final year of program participation).

The Proposed rule would establish modified non-8(a) business activity targets for Participants with less than five years remaining in the program as of August 15, 1989. There would be no fixed percentage of non-8(a) business required for firms having two years or less remaining in the program as of August 15, 1989. Such firms would be required only to make substantial and sustained efforts to meet the non-8(a) business activity targets set forth in their business plans. Many of these firms are heavily 8(a) reliant and SBA believes that establishing required percentages for non-8(a) business would have little practical effect. For Participants with more than two but less than five years remaining in the program, the proposed rule would set the following modified non-8(a) business activity targets: 10–20 percent non-8(a) business in the first year in the transitional stage, if applicable; 20–30 percent non-8(a) business in the second year in the transitional stage, if applicable; 35–40 percent non-8(a) business in the third year in the transitional stage; 45–50 percent non-8(a) business in the fourth year in the transitional stage; and 60–65 percent non-8(a) business in the fifth year in the transitional stage (the final year of program participation). These targets would require less non-8(a) business than those for newly certified firms and firms with more than five years remaining in the program. SBA does not want to unduly burden firms that are already participating in the program, but at the same time does want to impose this business mix requirement to ensure that firms are able to survive in the competitive arena after exiting the program.

Proposed § 124.312(c)(11) would require a Participant in the transitional stage to certify that it is in compliance with the non-8(a) business activity targets or that it is in compliance with such remedial measures ordered by SBA before it could receive any additional 8(a) awards.

Proposed § 124.312(c)(12) would authorize SBA to take remedial actions for Participants that fail to achieve the minimum percentage of the applicable non-8(a) business activity target. The severity of the remedial measure used would depend on the extent to which the Participant failed to obtain non-8(a) business. The potential remedies could range from requiring a Participant to obtain management and/or technical assistance where the Participant's non-8(a) business activity is very close to the required target, to reducing a Participant's 8(a) support level or reducing/eliminating sole source 8(a) awards for Participants which have had less success in meeting the required targets, to termination where a Participant makes no effort to obtain non-8(a) business and is content to rely solely on the 8(a) program.

Proposed § 124.313 would repeat the provision of SBA's current regulations that SBA will certify its own competence to perform the 8(a) requirement. This certification, required by law for entering into any 8(a) contract (sole source and competitive), should not be confused with the entirely distinct Certificate of Competency (COC) available under the Small Business Act and Part 125 of this Title. That COC program for individual firms is not available with respect to 8(a) contracts. The certification is based on SBA's determination that the selected 8(a) concern is responsible to perform the contract. An 8(a) contract will not be awarded to any 8(a) concern that SBA believes does not have the capability, competency, capacity, credit, integrity, or tenacity and perseverance to perform the requirement.

Proposed § 124.314 would require the selected 8(a) concern in either a sole source or competitive 8(a) award to perform a certain percentage of the requirement with its own work force. The percentages for service and supply contracts are taken directly from section 8(a)(14)(A) of the Small Business Act, 15 U.S.C. 637(a)(14)(A), as amended by Pub. L. 99–661. In addition, section 8(a)(14)(C) of the Small Business Act requires SBA to establish performance of work requirements for general and specialty construction. This proposed rule would require an 8(a) contractor to perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees for a general construction contract, and at least 25% of the cost of the contract, not including the cost of materials, with its own employees for a specialty construction contract. These are the same percentage of work requirements that the 8(a) regulations have historically required for general and specialty trade construction contracts. This proposed rule would not change those requirements. The proposed rule would clarify that when the regulation requires the 8(a) concern to perform a certain percentage of the contract, work done by an 8(a) concern's subsidiary, even if wholly owned, does not count in determining whether the applicable performance of requirement is being fulfilled.

Proposed § 124.314(d) would specify how this performance of work requirements would apply to indefinite quantity contracts. This proposed section would require the Program Participant, at any point in time, to have performed the required percentage of the total value of the contract to that date. A Participant would not be required to perform the mandated percentage of each task order with its own employees or work force, but would have to perform the required percentage of the combined total of all task orders to date. SBA would be able to waive this requirement where subcontracting is essential up front before the 8(a) contractor can begin performance (i.e., the subcontractor performs work in preparation of the 8(a) subcontractor's performance).

Proposed § 124.315 would define what constitutes "fair market price" for 8(a) contract purposes. This section is taken almost verbatim from section 303(e) of the Business Opportunity Development Reform Act of 1988.

Proposed § 124.316 would authorize SBA to delegate, by the use of special clauses in the prime and subcontract, the responsibility for administering an 8(a) subcontract to the procuring agency. This proposed section would authorize SBA to delegate all subcontract administration functions *except* with

respect to the following: the exercise of options; novation agreements; any modification issued pursuant to the "Changes," "Differing Site Conditions," "Price Reduction," "Default-Damages for Delay-Time Extensions" and "Suspension of Work" clauses; payments to contractors; termination of the subcontract; and consent to placement of subcontracts; and all matters related to the approval, disbursement and repayment of Advance Payments granted by SBA. This new section was needed because the delegation of authority clause contained in § 52.219-11 of the FAR, Title 48 of the Code of Federal Regulations, which is inserted in all 8(a) contracts between the procuring agency and SBA, could be read broadly so that all administration of the subcontract, including the exercise of options and modifications and novations, could be achieved without SBA's concurrence. SBA believes that it cannot delegate away its privity of contract and, thus, must be part of any option, modification or novation agreement.

Proposed § 124.317 would provide for termination of a contract for convenience if the disadvantaged owner(s) of the 8(a) concern performing the contract transfer(s) ownership of the concern. This section is taken directly from section 407 of the Business Opportunity Development Reform Act of 1988 and is designed to encourage performance by the 8(a) firm that initially received the contract. The 8(a) Participant which was awarded the 8(a) contract would be required to notify SBA immediately upon entering an agreement to transfer all or part of its ownership to any other party.

Proposed § 124.318 would incorporate into the regulations opinions of the SBA's General Counsel concerning the exercise of options and modifications. Specifically, proposed § 124.318(a) would require that the exercise of an unpriced option be considered a new contracting action. As such, if a concern has exited the 8(a) program or is other than small under the size standard corresponding to the SIC Code for the requirement, negotiations to price the option could not be entered into and the option could not be exercised. If, however, the concern were still a Program Participant and still a small business under the size standard corresponding to the SIC Code for the requirement, negotiations to price the option could be entered into and, if a fair and reasonable price is negotiated, the option could be exercised. Similarly, a modification beyond the scope of the initial 8(a) contract award would constitute a new contracting action and the same rules that apply to unpriced options would apply. Alternatively, a priced option or a modification within the scope of the initial 8(a) contract award could be exercised whether or not the concern that received the award has exited the 8(a) program and whether the concern has grown large under the size standard corresponding to the SIC Code for the requirement.

Proposed § 124.319 would set forth the procedures for both terminations of 8(a) contracts for default and for convenience. These provisions, with one exception, are identical to those currently contained in 13 CFR 124.302(d). The only exception is that, as noted above in proposed § 124.317, a termination for convenience would be instigated whenever the disadvantaged owner(s) of an 8(a) concern transfer(s) ownership of the concern to any other party and the SBA Administrator does not grant a waiver pursuant to the exceptions set forth in proposed § 124.317.

Proposed § 124.320 would address disputes and appeals. Proposed paragraph (a) would address contract disputes generally. Disputes arising between an 8(a) subcontactor and a procuring agency contracting officer would generally be decided unilaterally by the procuring agency contracting officer. For disputes arising out of advance payments or business development expense funds, the contracting officer would be that of SBA. For disputes arising out of construction contracts where SBA has waived bonding pursuant to proposed § 124.305, the contracting officer deciding the dispute would be that as agreed between SBA and the procuring agency. It is anticipated that where a dispute arises out of the performance of the contract, the procuring agency contracting officer would decide the dispute, and where the dispute arises out of the disbursement of funds from the special bank account, the SBA contracting officer would decide it. Participants have the right to appeal contracting officer decisions under the Contract Disputes Act of 1978.

Proposed paragraph (b) would describe the conditions and procedures for appeal by SBA to the head of a procuring agency. This paragraph would clarify that SBA is authorized to appeal both the decision not to set aside a requirement for the 8(a) program and the terms and conditions of a contract already set aside for the program. This paragraph would also provide time limitations for notification of appeal and for a decision on the appeal. The procuring agency, upon receipt of the appeal, would be required to suspend all further action regarding the procurement until a written decision is made, unless the procuring agency could show urgent and compelling circumstances. This paragraph also would require the head of the procuring agency to notify the SBA of the reasons for his or her determination. This paragraph would implement section 8(a)(1)(A) of the Small Business Act, as amended by section 303(d).

Proposed § 124.321 would set forth the requirements for entering joint venture agreements to perform 8(a) contracts. Proposed paragraph (a) would set forth the prerequisites for entering into a joint venture agreement. The joint venture would be required to be solely for the performance of an 8(a) contract and could be entered into only when the 8(a) concern lacks the necessary capacity to perform the contract on its own. Any joint venture entered into by a Participant would be required to be of substantial benefit to the Participant. A joint venture agreement would be found to be of substantial benefit to the 8(a) concern when it would further the goals and targets set forth in its business plan, strengthen the concern's financial position, or contribute to the concern's business development.

Proposed paragraph (b) would set forth the requirement that, except for tribally owned concerns, the combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the SIC code industry designated for the contract. SBA generally considers joint venture partners to be affiliates for purposes of determining size. *See* § 121.3(vii)(C).

Proposed paragraph (c) would address the required contents of joint venture agreements. Such required contents would include designation of the parties to the venture as co-managers; a distribution of 51 percent of the revenues earned by the joint venture to the 8(a) concern; the establishment of a special bank account requiring the signature of all participants in the joint venture for withdrawal; an itemized description of all major equipment, facilities and other resources; and a provision in the agreement specifying the responsibilities of the parties with regard to contract performance and negotiation of subcontracts. These requirements are intended to prevent the use of joint ventures as fronts for non-8(a) concerns and to insure that the primary benefits of 8(a) contracts go to Program Participants.

Proposed paragraph (d) would set forth additional requirements for joint venture agreements including approval by the AA/MSB&COD or his or her designee; designation of an employee of the 8(a) concern as a designated project manager responsible for contract performance; housing of records in the offices of the 8(a) concern; the submission of quarterly financial statements; the submission of a project-end profit and loss statement; and performance of work requirements. These requirements would enable the SBA to adequately monitor the joint venture to prevent fraud and circumvention of the regulations and to ensure that the joint venture is operating in accordance with the terms and conditions set forth in the joint venture agreement.

Proposed paragraph (e) would give SBA the authority to inspect the records of the joint venture at any time.

Proposed paragraph (f) would set forth the statutory exemption from SBA's size limitations for joint ventures with concerns owned by Indian tribes. Section 602 of the Reform Act grants joint ventures entered into by tribally owned concerns exemptions from SBA's size limitations for up to two contracts provided that certain requirements are met. The tribally owned concern must own 51 percent or more of the joint venture; the joint venture must be located on the tribe's reservation or on land owned by the tribe; the joint venture must perform most of its activities on such reservation or tribally owned land; and members of the tribe must be employed for at least 50 percent of the joint venture's workforce. This proposed paragraph would also require that a requirement suitable for a joint venture must be identified by either SBA or a tribally owned concern and may not be identified by a large business concern. SBA is authorized to provide these exemptions only until September 30, 1991.

Proposed § 124.401 would address Advance Payments. The requirements set forth in this proposed section would be substantively the same as those currently used by SBA in authorizing and administering advance payments. The current regulation has been reworded where necessary for clarity. In addition, several provisions which currently appear only in SBA's Standard Operating Procedures or policy guidelines have been added to this section of the proposed regulations. This proposed section would be, as is the SBA's existing regulation concerning advance payments, patterned after the requirements of the Federal Acquisition Regulations (FAR). This proposed section would also incorporate the provisions currently appearing in § 124.403 concerning letters of credit. Again, the substance of the proposed regulation dealing with letters of credit has not been changed, but it has been incorporated into the advance payment section for ease of use, understanding and clarity.

Proposed § 124.402 would address Business Development Expense (BDE). This proposed section would govern those Program Participants that are performing contracts for which BDE was given prior to October 1, 1989. As previously stated, the newly authorized loan program set forth in § 122.57 of this Title is intended to replace BDE. The granting of BDE is no longer authorized after October 1, 1989, the effective date of the statutory provision authorizing the loan program. This section would provide that any BDE funds received by a Program Participant prior to October 1, 1989 must be used exclusively for the purposes stated in the BDE approval and that use of such funds for other purposes would be grounds for termination from the 8(a) program pursuant to § 124.209. Program Participants which received BDE funds prior to October 1, 1989 would be required to maintain records to substantiate the uses for which the BDE funds have been expended. This section would also provide that a Participant would be liable for repayment of the full amount of the BDE granted the Participant in the event of default on the 8(a) contract to which the BDE funds relate.

Proposed § 124.501, *Development assistance program*, is identical to § 124.501 of the current regulations.

Proposed § 124.502, *Small Business and Capital Ownership Development Program*, is identical to § 124.502 of the current regulations.

Proposed § 124.601 would set forth those reporting requirements not set forth in other sections. Proposed paragraph (a) would require 8(a) concerns to submit a capability statement to SBA annually. Such statement would briefly describe the 8(a) concern's various contract performance capabilities. The capability statements would be submitted to the appropriate procuring agencies for the purpose of matching requirements with appropriate 8(a) concerns. This paragraph would implement section 8(a)(12) of the Small Business Act, as amended by section 501 of the Reform Act.

Proposed paragraph (b) would require each Program Participant to submit a written report to SBA semi-annually concerning the accountants, consultants, attorneys, and other such parties receiving compensation to assist the Participant to obtain Federal contracts. Participants would be required to include in such report the amount of compensation received by such persons during the relevant reporting period along with a description of the activities performed. Reports raising suspicion would be immediately forwarded to SBA's Inspector General. The failure to submit a report would be considered good cause for the initiation of a termination proceeding pursuant to § 124.209. This paragraph would implement section 8(a)(20) of the Small Business Act, as added by section 404 of the Reform Act.

Proposed paragraph (c) would address the reports required of former 8(a) Program Participants. Former Participants would be required to provide such information as SBA may request concerning such former Participants' continued business operations, contract portfolio and financial condition for a period of three years following the date on which the concern exited the program. Failure to provide such information could result in SBA's refusal to approve options on contracts awarded through the 8(a) program. This section would assist SBA in fulfilling its statutory data collection and reporting requirements under section 7(j)(16) of the Small Business Act, as added by section 408 of the Reform Act. That section requires SBA to periodically evaluate those concerns which have exited the 8(a) program during the immediately preceding three fiscal years.

Compliance With Executive Orders 12291 the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) and 12612 the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Small Business Administration considers these regulations to be a major rule pursuant to Executive Order 12291 and one which will have significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. Therefore, SBA offers the following Regulatory Impact Analysis/Regulatory Flexibility Analysis:

a. Descriptions of Reasons Why This Action Is Being Considered

These proposed rules are being considered to implement sections 8(a) and 7(j) of the Small Business Act, as amended by the Business Opportunity Development Reform Act of 1988. (15

U.S.C. 637(a) and 636(j), as amended by Pub. L. 100–656). These proposed rules would also provide clarification of the intention that the benefits of the 8(a) program be used exclusively for business development purposes to help small businesses owned and controlled by socially and economically disadvantaged individuals to compete on an equal basis in the mainstream of the American economy.

b. Statement of Objectives and Legal Basis for the Proposed Rules

The Small Business Administration (SBA) proposes to amend its regulations governing the Minority Small Business and Capital Ownership Development Program authorized by sections 7(j)(10) and 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a)). In most instances the proposed revisions would implement changes required by the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656), enacted November 15, 1988. Some provisions, however, would incorporate into the regulations existing Agency policy while others would implement proposed policy changes.

The legal basis for the proposed rules are sections 5(b)(6), 7(j) and 8(a) of the Small Business Act as amended by Pub. L. 100–656 (15 U.S.C. 634(b)(6), 636(j) and 637(a)).

c. Description of and Estimate of the Number of Small Entities to Which These Proposed Rules Will Apply

If adopted in final form, these proposed rules would apply to all business concerns applying for or participating in the 8(a) program. They would also apply to certain businesses requiring social and economic disadvantaged status for eligibility to participate in such programs as the Small Disadvantaged Business (SDB) Set-Aside Program authorized by section 1207(a) of Pub. L. 99–661 and the section 8(d) Subcontracting Program authorized by Section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

There are approximately 2,800 firms certified and eligible for participation in the 8(a) program. It is anticipated that within four years the number of firms in the 8(a) program will reach 5,000. Prior to the enactment of the Business Development Reform Act, approximately 2,000 applications were received each year. Of this number, 1,000 firms on average advanced to the second stage and completed the application process. Experience shows that approximately 35 percent of the firms completing the application process were accepted for participation in the 8(a) program annually.

SBA anticipates that the number of applications under the Business Development Reform Act will increase due to more expeditious application and processing procedures. Therefore, we anticipate that an average of 2,500 to 3,000 applications can be expected annually. Experience demonstrates an average decline rate of 80 percent. New firms coming into the program under the proposed rules could reach 600 annually.

Over the next 18- to 24-month period, we expect very few firms to leave the program as a result of provisions of the "grandfathering clause" permitting a firm up to an additional eighteen months' participation in the program.

d. Preliminary Regulatory Impact Analysis

If adopted in final form, these regulations would have a major economic impact on the national economy. Currently, purchases through the 8(a) program approximate $3.2 billion annually and are projected to reach $4 billion when the Business Development Opportunity Reform Act is implemented by regulation.

There would be certain economic benefits received by 8(a) Program Participants in that they would be provided increased access to developmental resources previously unavailable to socially and economically disadvantaged individuals. For example, it is expected that as a result of clarification of lines of responsibility for implementing the 8(a) program and expedition of the application process for 8(a) program certification, additional firms could be accepted for participation. These firms are expected to be stronger as a result of increased monitoring, availability of counseling and assistance for development. Firms remaining in the program would be required to achieve a reasonable mix of competitive as well as 8(a) contracts and establish business practices designed to enhance their ability to survive once they have completed their participation in the program.

In complying with increased monitoring and reporting requirements, program participants would experience some additional costs. However, these costs should be significantly less than the potential benefits which could be realized by the program participants through their greater access to and ownership of productive capital as a result of 8(a) Program Participation.

While the initial costs to Federal agencies for administering the program could be higher, the long range overall costs should be significantly reduced due to stronger firms and the increased numerical base of firms capable of competing for Federal procurement. This would also result in decreased acquisition costs of goods and services by the Federal Government.

In addition, these proposed rules would also apply to business concerns seeking to participate in other programs requiring social and economic disadvantaged status, where such status has been challenged. Examples of such programs are the Small Disadvantaged Business Set-aside program authorized by section 1207(a) of Pub. L. 99–661 and the section 8(d) Subcontracting Program authorized by section 8(d) of the Small Business Act. Since potential Participants in those programs could be affected by these proposed rules if their disadvantaged status is challenged to SBA, these proposed rules are likely to have an additional impact.

Currently, the Department of Defense's procurements represent a significant portion of total government purchases at $135.3 billion (1988.). In that year Small Disadvantaged Businesses received $3.6 billion (2.8 percent) of this amount. (Source: Office of Small and Disadvantaged Business Utilization and Office of Secretary of Defense). However, anticipated impact would be tangential because the DOD Program exists independently and does not rely on implementation of these rules for its existence. The proposed rules would only pertain to the distribution of contracts between eligible firms. While there could be some difference to individual firms seeking to do business with the Federal Government under such programs, there would be little or no impact on the number of contracts set-aside pursuant to such programs. Therefore, the economic impact on the national economy resulting from the effect of these rules on such programs is expected to be minimal.

The Small Business Administration is expected to experience the majority of additional costs related to implementing the provisions of these proposed rules. It is anticipated that these increased costs will not exceed $11 million. They are likely to be largely in the areas of increased administration for new guidelines and procedures and added personnel and equipment costs.

e. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements of These Proposed Rules

The following provisions of these proposed rules would require significant reporting, recordkeeping and compliance requirements.

1. Business Plan

Section 124.301 would require that within 30 days of receipt of certification, Program Participants develop comprehensive business plans establishing business activity targets, objectives and goals.

2. Annual Review

Section 124.302 would require annual review of a Participant's business plan with modification, where appropriate, and development of forecasting for required contracting support. Starting in the year of transition (fifth year), Participants would be required to submit a transition management plan establishing plans for their competitive business mix and the firm's survival after expiration of its program term.

Section 124.111 would reflect other requirements for contracting eligibility review such as certification of continued 8(a) eligibility, personal financial statements for each disadvantaged owner, record of payments made by Participants to disadvantaged owners.

3. Reporting and Verification of Business Activity

Section 124.312 would require Program Participants to provide SBA with quarterly and annual financial statements within 90 calendar days (180 calendar days for audited statements) from the end of each period. Within 30 days of the end of the program year, the Participant would provide SBA with the annual report of all non 8(a) contracts, options and modifications affecting prices executed during the program year.

4. Miscellaneous Reporting Requirements

Section 124.601 would require each Program Participant to annually submit a capability statement to SBA that describes the firm's contract performance capabilities and the name of the Participant's Business Opportunity Specialist. These capability statements would be used for contract matching requirements with various procuring agencies.

Section 124.601 semi-annually would also require the Program Participant to provide the Participant's Business Opportunity Specialist with a listing and amounts paid to agents, representatives, attorneys, accountants, consultants and other parties (excluding employees) to assist in obtaining Federal contracts.

Finally, Section 124.601 would require former 8(a). Program Participants to provide SBA with requested information concerning business operations, contract portfolio and financial conditions for a three year period following exit from the program.

f. Federal Rules Which May Duplicate This Proposed Rule

Although there are Federal rules contained in sections of the Federal Acquisition Regulations (FAR) which may duplicate or overlap with these proposed rules, it is SBA's understanding that any inconsistency between those rules and these proposed rules will be corrected upon SBA's publication of final rules affecting this Subpart.

g. Significant Alternatives to Proposed Rules Which Would Accomplish Stated Objectives

SBA submits that there are no significant alternatives which would minimize any significant economic impact upon small entities.

List of Subjects in 13 CFR Part 124

Government procurement, Minority business, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, pursuant to the authority set forth in sections 7(j) and 8(a) of the Small Business Act, 15 U.S.C. 636(j) and 637(a), SBA hereby amends Part 124 of Title 13 of the Code of Federal Regulations as follows:

PART 124—[AMENDED]

1. The authority citation for Part 124 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99-661 (sec. 1207), and Pub. L. 100-656.

2. Subpart A of Part 124 is revised to read as follows:

Subpart A—Minority Small Business and Capital Ownership Development

Sec.

Subpart A—Minority Small Business and Capital Ownership Development

§ 124.1 Scope of regulations.

(a) *General.* (1) These regulations implement sections 8(a) and 7(j) of the Small Business Act, as amended by the Business Opportunity Development Reform Act of 1988, (15 U.S.C. 637(a) and 636(j), as amended by Pub. L. 100-656). Sections 8(a) and 7(j) of the Small Business Act establish the Minority

Small Business and Capital Ownership Development Program or 8(a) Program. The 8(a) Program is intended to be used exclusively for business development purposes to help small businesses owned and controlled by socially and economically disadvantaged individuals to compete on an equal basis in the mainstream of the American economy.

(2) These regulations apply to all business concerns applying for or participating in the 8(a) program as of the effective date of these regulations. As noted, portions of these regulations also apply to other Federal programs for which social and economic disadvantaged status is a requirement of program eligibility. Such programs include, among others, the Small Disadvantaged Business (SDB) Set-aside and Bid Preference Programs authorized by section 1207(a) of Pub. L. 99–661, and the Minority Small Business Subcontracting Program authorized by section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

(b) *The 8(a) and 7(j) programs.* (1) Section 8(a) authorizes SBA to enter into all types of contracts, including, but not limited to, contracts for supplies, services, construction, research and development with other Government departments and agencies and to subcontract the performance of these contracts to small business concerns owned and controlled by socially and economically disadvantaged individuals, Indian tribes or Hawaiian Native Organizations.

(2) Section 7(j) authorizes SBA to provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or small business concerns eligible for assistance under sections 7(i), 7(j)(10), and 8(a) of the Small Business Act.

§ 124.2 Associate Administrator for Minority Small Business and Capital Ownership Development.

The Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD), who shall be an employee in the competitive service or in the Senior Executive Service, and a career appointee, is responsible for the formulation and execution of the policies and programs under sections 7(j) and 8(a) of the Small Business Act. The AA/MSB&COD operates under the supervision of, and is responsible to, the Administrator of SBA.

§ 124.3 Division of Program Certification and Eligibility.

The Division of Program Certification and Eligibility (Division) within the Office of Minority Small Business and Capital Ownership Development (MSB&COD) shall be responsible for handling all matters relating to 8(a) program eligibility, termination and graduation from 8(a) program participation, and certifications of disadvantaged status for purposes of any program or activity conducted under the authority of section 8(d) of the Small Business Act or any Federal law that references such section. The Division, headed by a Director who shall report directly to the AA/MSB&COD, shall have field offices within some or all of the Agency's regional offices.

§ 124.4 Commission on Minority Business Development.

A Commission on Minority Business Development (Commission) shall be established pursuant to section 505 of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656). This Commission is authorized to review all Federal programs designed to promote the development of minority owned businesses in order to ascertain whether the congressionally described goals and purposes of such programs are being realized.

§ 124.5 Violations.

Willful violation by an applicant for admission to the section 8(a) program or an applicant for participation in the section 7(j) program of any of SBA's regulations governing its other programs may result in the applicant's denial of admission to the program. The nature and severity of any such violation will be considered by the AA/MSB&COD in making a determination on the admission of an applicant to the program.

§ 124.6 Penalties for misrepresentations and false statements.

(a) *General.* Section 16 of the Small Business Act (15 U.S.C. 645) sets forth penalties for false statements and misrepresentations.

(b) *Misrepresentation of small business or small disadvantaged business status.* The Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656) increased the penalties for misrepresentation of small business status or small disadvantaged business status. Generally, section 16(d) of the Small Business Act provides that any person or entity that misrepresents the status of any concern or person as a "small business concern" or "small business concern owned and controlled by socially and economically disadvantaged individuals" in order to obtain for oneself or another any of the contracting opportunities set forth in paragraph (b)(1) of this section will be subject to the penalties set forth in paragraph (b)(2) of this section.

(1)(i) A prime contract to be awarded pursuant to section 9 (Small Business Innovation Research Authorities Program) or section 15 (various small business set-aside authorities) of the Small Business Act;

(ii) A subcontract to be awarded pursuant to section 8(a) of the Small Business Act;

(iii) Subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d) of the Small Business Act; or

(iv) A prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 8(d) of the Small Business Act for a definition of program eligibility.

(2)(i) A fine of not more than $500,000 or by imprisonment for not more than 10 years, or both;

(ii) The administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812) and implementing regulations (54 FR 6271, February 9, 1989);

(iii) Suspension and debarment as specified in 13 CFR Part 145 or Subpart 9.4 of the Federal Acquisition Regulation (FAR) (48 CFR Subpart 9.4), or any successor regulation, on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility of a person or entity to transact business with the Federal government; and

(iv) Be ineligible for participation in any program or activity conducted under the authority of the Small Business Act or the Small Business Investment Act of 1958 (15 U.S.C. 661, *et seq.*) for a period not to exceed 3 years.

(c) *Misrepresentation concerning compliance with competitive mix targets.* Section 16(f) of the Small Business Act, as amended by Pub. L. 100–656, imposes the penalties set forth in paragraph (b)(2) of this section on any person or entity that falsely certifies past compliance with the requirements of section 7(j)(10)(I) of the Small Business Act which deals with competitive business mix and attainment of business activity targets (see § 124.312).

§ 124.7 Restrictions on fees for applicant and Participant representatives.

(a) *General.* The compensation received by any agent or representative of an 8(a) applicant or Program Participant for assisting the applicant in obtaining 8(a) certification or for assisting the Program Participant in obtaining 8(a) contracts must be reasonable in light of the service(s) performed by the agent or representative.

(b) *Contingent fees.* The fee charged by any agent or representative of an 8(a) applicant or Program Participant for assisting the applicant in obtaining 8(a) certification or for assisting the Program Participant in obtaining 8(a) contracts cannot be contingent upon the applicant/Participant receiving either 8(a) certification or specific 8(a) contract awards.

(c) *Fees as a percentage of contract award.* A Program Participant is prohibited from agreeing to pay or paying a fee to any agent or representative for assistance in obtaining a specific 8(a) contract award, if such fee is based on a percentage of the contract award, either in terms of total value of the award, profit, or otherwise.

§ 124.100 Definitions.

(a) "Alaska Native" means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination thereof. The term includes, in the absence of proof of a minimum blood quantum, any citizen who is regarded as an Alaska Native by a Native village or Native group and whose father or mother is regarded as an Alaska Native.

(b) "Alaska Native Corporation" means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

(c) "Application" or "8(a) application" means all forms and attachments required by SBA to be completed by an applicant for the 8(a) program for the purpose of establishing program eligibility.

(d) "Business Opportunity Specialist" (BOS) means the SBA field office employee responsible for providing business development assistance to Program Participants pursuant to section 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j), 637(a)).

(e) "Business plan" means the business plan documents as submitted by the 8(a) concern and approved by SBA which include the objectives, goals, and business projections of an 8(a) concern, and all written amendments or modifications which have also been approved by SBA.

(f) "Certification of SBA's competency" means a certification by SBA, based on its assessment of an 8(a) concern's competency to perform, that SBA is competent to perform the requirements as stated in the contract. The assessment does not require a special investigation or the issuance of a Certificate of Competency (COC) as provided for elsewhere in these regulations under the authority of section 8(b)(7) (A), (B) and (C) of the Small Business Act.

(g) "Concern" means any business entity organized for profit which has a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, materials and/or labor. For definition of "Small Business Concern," and regulations relating to small business size standards, *see* § 124.102 and Part 121 of this title.

(h) "Descendant of an Alaska Native" means a lineal descendant of an Alaska Native or of an individual who would have been an Alaska Native if such individual were alive on December 18, 1971, or an adoptee of an Alaska Native or of a descendant of an Alaska Native whose adoption occurred prior to his or her majority (age 18 in the State of Alaska) and is recognized at law or in equity.

(i) "Disadvantaged owner" means an individual who SBA has determined to be socially and economically disadvantaged in connection with a concern's application for or participation in the 8(a) program.

(j) "Fixed Program Participation Term" means that ultimate time period during which a concern may have participated in the 8(a) program prior to the effective date of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656) (November 15, 1988).

(k) "Graduation" means completion of 8(a) program participation prior to expiration of the Program Term because of substantial achievement of the targets, objectives and goals contained in the Participant's business plan.

(l) "Immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step-father, step-mother, step-son, step-daughter, step-brother, step-sister, half-brother and half-sister.

(m) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation as defined in paragraph (b) of this section which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which such tribe, band, nation, group, or community resides. See paragraph (jj) of this section for definition of "tribally-owned concern."

(n) "Joint venture agreement" means an agreement between an eligible 8(a) concern and another small business concern, whether or not an 8(a) participant, solely for the purpose of performing a specific 8(a) contract.

(o) "Local buy item" means a supply, service (nonprofessional/professional) or product purchased to meet the specific needs of one user in one location. Examples include the purchase of services, such as custodial, trash hauling, ADP support, auditing and training as well as construction work to be performed in one location and single user manufactured items.

(p) "Manufacturer" means a concern which owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment described in the business plan. In order to qualify as a manufacturer, a concern must be able to show

(1) That it is an established manufacturer of particular goods or goods of general character which may be sought by the Government, or

(2) If it is newly entering into such manufacturing activity, that it has made all necessary prior arrangements for space, equipment, and personnel to perform manufacturing operations.

A new firm which has made such definite commitments in order to enter a manufacturing business which will later qualify it for the 8(a) program, shall not be barred from 8(a) approval because it has not yet done any manufacturing; however, this interpretation is not intended to qualify a firm whose arrangements to use space, equipment, or personnel are contingent upon 8(a) approval. This definition is based upon the Walsh-Healey Public Contracts Act, 41 U.S.C. 35–45.

(q) "National buy item" means an item or service purchased to meet the needs of a system where supply control, inventory management, and procurement responsibility have been

assigned to a central procuring activity to support the needs of one or more users of the item in two or more locations. Examples include military clothing purchased by the Defense Personnel Support Center of the Department of Defense, paint or hand tools purchased by the Federal Supply Service of the General Services Administration, medical supplies purchased by the Veterans Administration, or studies, evaluations, consulting services or similar services purchased by the headquarters office of a Department or agency for use in two or more commands or field offices.

(r) "Native Hawaiian" means any individual any of whose ancestors were natives prior to 1778, of the area which now comprises the State of Hawaii.

(s) "Native Hawaiian Organization" means any community service organization serving Native Hawaiians in the State of Hawaii which:

(1) Is a not-for-profit organization chartered by the State of Hawaii,

(2) Is controlled by Native Hawaiians, and

(3) Whose business activities will principally benefit such Native Hawaiians.

(t) "Negative control," as used in this part is defined in § 121.3(a)(i); and § 124.104(c).

(u) "Nondisadvantaged individual" means any individual who does not claim disadvantaged status, does not qualify as disadvantaged, or upon whose disadvantaged status SBA does not rely in qualifying the concern for 8(a) program participation. Except as provided in § 124.116(c)(4), an individual who has used his/her disadvantaged status in previously qualifying a concern for 8(a) program participation is considered a nondisadvantaged individual for all other 8(a) program purposes.

(v) "Non-8(a) business activity target" means the amount of non-8(a) revenue forecasted in a Participant's approved business plan during each year of its participation in the 8(a) program. During the developmental stage of program participation, these targets are goals of non-8(a) business that a Participant must strive to achieve and may be either a percentage of total revenues or a specified dollar figure. During the transitional stage of program participation these targets must be expressed as a percentage of total revenues, as set forth in § 124.312(c), that a Participant is required to achieve in each year in the transitional stage.

(w) "Open requirement" means a requirement submitted to SBA by a procuring agency for possible 8(a) award without a particular 8(a) concern being identified as a candidate for the award. Open requirements can be for local buy items or national buy items.

(x) "Operational control" means actual or constructive authority to establish long and short term goals for the concern, and manage the concern's day to day operations.

(y) "Personal net worth" means the net value of the assets of an individual remaining after total liabilities are deducted. See § 124.106.

(z) "Primary industry classification" means the four digit Standard Industrial Classification (SIC) Code designation which, for an on-going applicant concern, best describes the industry representing the largest proportion of its business revenues for the previous year or, in the case of a start-up applicant concern, that SIC Code designation which best describes the industry in which it intends to do the most business.

(aa) "Principal place of business" means the location at which the business records of the applicant concern are maintained and the location at which the individual who manages the concern's day-to-day operations spends the majority of his/her working hours.

(bb) "Program Participant" ("Participant" or "8(a) Participant") means a small business concern participating in the Small Business and Capital Ownership Development Program established by section 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j) and 637(a)).

(cc) "Program suspension" means the temporary cessation of all 8(a) program assistance pursuant to § 124.115 of these regulations.

(dd) "Program year" means a 12-month period of an 8(a) Participant's program participation. The first program year begins on the date that the concern is certified to participate in the 8(a) program and ends one year later. Each subsequent program year begins on the Participant's anniversary of program certification and runs for one 12-month period.

(ee) "Regular dealer" means regular dealer as defined by the Walsh-Healey Public Contracts Act, 41 U.S.C. 35–45, and Department of Labor regulations found at 41 CFR 50–201.101, 50–206.53, and 50–206.54.

(ff) "Requirement" means a contract opportunity from a Federal procuring agency to acquire articles, equipment, supplies, services, materials or construction work.

(gg) "Same or similar line of business" means all business activities within the same two-digit "Major Group" of the Standard Industrial Classification (SIC) System (set forth in the SIC Manual), as the primary industry classification of the applicant concern.

(hh) "Self-marketing" of a requirement occurs when an 8(a) firm identifies a requirement that has not been committed to the 8(a) program and through its marketing efforts causes the procuring agency to offer that specific requirement to the 8(a) program on its behalf. A firm which identifies and markets a requirement which is subsequently offered to the 8(a) program as an open requirement or on behalf of another 8(a) Participant has not "self-marketed" the requirement within the meaning of these regulations.

(ii) "Termination" means the permanent cessation of 8(a) program participation prior to the expiration of the concern's Program Term for good cause pursuant to § 124.114.

(jj) "Tribally-owned concern" means any concern at least 51 percent owned by an Indian tribe as defined in paragraph (h) of this section.

(kk) "Unconditional ownership" means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, shareholder agreements or other similar arrangements which serve to allow the benefits of program participation to accrue to nondisadvantaged individuals.

§ 124.101 The 8(a) program: General eligibility.

(a) In order to be eligible to participate in the 8(a) program, an applicant concern or an individual upon whom 8(a) eligibility is based must meet all of the eligibility criteria set forth in § 124.102 through § 124.110 hereunder. An applicant concern owned and controlled by an Indian tribe must meet the requirements set forth in § 124.116 and in §§ 124.102 through 124.110, as applicable. An applicant concern owned and controlled by a Native Hawaiian Organization must meet the requirements set forth in § 124.117 and in §§ 124.102 through 124.110, as applicable. All determinations by the AA/MSB&COD made pursuant to §§ 124.102, 124.103, 124.104, 124.105, 124.106, and 124.107 shall be in writing, setting forth the findings based on relevant facts and in accordance with law and regulations, upon which the determination is based. An applicant concern which is declined 8(a) program admission may request a reconsideration of such decline, as set forth in § 124.206. If the application is denied on reconsideration based on a negative finding of social disadvantage, economic disadvantage, ownership or control, such decline may be appealed

by an unsuccessful applicant to the Office of Hearings and Appeals. If no reconsideration is sought or if after reconsideration the application is declined based in whole or in part on a ground other than a negative finding of social disadvantage, economic disadvantage, ownership or control, the written decline of the AA/MSB&COD is final and not subject to appeal. Appeal procedures for a decline of program admission by the AA/MSB&COD and grounds for which such an appeal may be brought are set forth in § 124.206 and Part 134 of this title. The written decision of the Office of Hearings and Appeals shall be the final Agency decision. A concern which has been declined for 8(a) program admission may reapply for the program 12 months after the date of the final Agency decision to decline.

(b) In order to continue its participation in the 8(a) program, a concern certified for program participation on or after the effective date of these regulations must continue to meet all eligibility requirements described in paragraph (a) of this section. In order to continue its participation in the 8(a) program, a concern certified for program participation prior to the effective date of these regulations must comply with the requirements of paragraph (a) of this section which have been previously required by regulation, policy or procedure. Within 12 months of the effective date of these regulations, such concerns must also come into compliance with the requirements of paragraph (a) of this section which have not been previously required by regulation, policy or procedure. Failure to do so may lead to termination or graduation pursuant to §§ 124.113 and 124.114.

(c)(1) It is SBA's intent to process applications for participation in a fair and consistent manner and to ensure that 8(a) program participation is limited to eligible individuals and concerns. Toward that end, SBA invites the participation of the public in preventing fraud and assuring the integrity of the 8(a) program.

(2) The AA/MSB&COD shall review any determination that an individual, applicant concern or Participant is eligible to participate in the 8(a) program whenever a member of the public submits credible evidence that:

(i) Such determination was based on fraudulent information;

(ii) SBA did not follow the requirements of these regulations in rendering the determination; or

(iii) The individual or concern has undergone one or more changes which have rendered it ineligible for 8(a) program particiption.

(3) The AA/MSB&COD shall determine whether the facts developed during any such review warrant further action. The member of the public whose information gave rise to the review shall be advised of SBA's findings, consistent with laws protecting confidentiality.

§ 124.102 Small business concern.

(a) In order to be approved for participation in the 8(a) program, an applicant concern must qualify as a small business concern as defined in § 121.4 of title 13, Code of Federal Regulations or § 124.116. The particular size standard to be applied will be based on the primary industry classification of the applicant concern. A concern owned by a Native Hawaiian Organization must also qualify as a small business concern, but the circumstance of ownership by the Native Hawaiian Organization shall not, by itself, cause affiliation with the Native Hawaiian Organization.

(b) If the Division of Program Certification and Eligibility (Division) is unable to determine that an applicant concern qualifies as a small business, the Division may deny the concern's application for 8(a) program admission or may request a formal size determination from the appropriate regional office. If the application is so denied, the small business concern may request a formal size determination from the appropriate regional office pursuant to § 121.8 of this title. Negative size determinations by an SBA regional office may be appealed to SBA's Office of Hearings and Appeals pursuant to § 121.11 of this title.

(c) In order to continue to participate in the 8(a) program, a Program Participant must qualify pursuant to the provisions of Part 121 of this title as a small business under one or more of the SIC Codes contained in the concern's approved business plan.

(d) Except for contracts awarded to joint ventures controlled by eligible Indian tribes, under § 124.320, a Program Participant must certify that it is a small business pursuant to § 121.4(g) of this title for the purpose of performing each contract awarded under the authority of section 8(a). SBA, in turn, will verify such certifications. In the event that the SBA does not accept a certification, the Program Participant may file an appeal with SBA's Office of Hearings and Appeals pursuant to §§ 121.4(g)(2)(ii)(D)(4) and 121.11 of this title.

§ 124.103 Ownership requirements.

Except for concerns owned by Indian tribes, Alaska Native Corporations or Native Hawaiian Organizations, in order to be eligible to participate in the 8(a) program, an applicant concern must be one which is at least 51 percent unconditionally owned by an individual(s) who is a citizen of the United States (specifically excluding permanent resident alien(s)) and who is determined by SBA to be socially and economically disadvantaged. See § 124.100 for definition of unconditional ownership. Generally, such individuals are required to have had a minimum of 51 percent ownership in the applicant concern for at least two years prior to the date of application for 8(a) program participation. In extraordinary circumstances, the AA/MSB&COD may waive this requirement where the disadvantaged owner(s) can demonstrate the concern's potential for success in accordance with paragraphs (b)(1) through (b)(4) of § 124.107. Special ownership requirements for concerns owned by Indian tribes and Alaskan Native Corporations are set forth in § 124.116. Ownership requirements for Native Hawaiian Organizations are set forth in § 124.117.

(a) In the case of an applicant concern which is a partnership, 51 percent of the partnership interest must be owned by an individual(s) determined by SBA to be socially and economically disadvantaged. Such ownership must be reflected in the concern's partnership agreement.

(b) In the case of an applicant concern which is a corporation, 51 percent of each class of voting stock and 51 percent of the combined total of all outstanding stock must be owned by an individual(s) determined by SBA to be socially and economically disadvantaged.

(c) A socially and economically disadvantaged individual(s) must hold unconditional ownership in the applicant concern. Such individual(s) cannot assert ownership of a concern on the basis of unexercised stock options or other arrangements.

(d) When determining ownership for purposes of 8(a) program eligibility, SBA will consider options to purchase stock by nondisadvantaged individuals or to convert non-voting stock or debentures held by nondisadvantaged individuals or entities to voting stock, to have been exercised.

(e) The individual(s) upon whom eligibility is based must receive at least 51 percent of the annual distribution of dividends of a corporate applicant concern and must be entitled to receive

100 percent of the value of each share of stock in his/her possession in the event that the stock is sold; and must be entitled to receive at least 51 percent of the distribution proceeds in the event of a dissolution of the corporation.

(f) An individual who is determined by SBA to be socially and economically disadvantaged for purposes of qualifying a concern for 8(a) program participation may not have an ownership interest in any other 8(a) concern. One 8(a) concern may not hold an ownership interest in any other 8(a) concern.

(g) A nondisadvantaged individual who is a partner, stockholder, officer and/or director in an 8(a) concern is prohibited from holding a simultaneous ownership interest in another 8(a) concern.

(h) A non 8(a) concern in the same or similar line of business is prohibited from having an ownership interest in an 8(a) concern.

(i) An 8(a) business concern may continue participation in the program subsequent to a change in its 8(a) ownership, provided that SBA gave prior written approval to such change. Where the change in 8(a) ownership results from the death or incapacity of a disadvantaged principal, prior approval is not required; however, the concern shall notify SBA as soon as possible. Continued participation of the 8(a) concern under new disadvantaged ownership requires compliance with all individual and business eligibility requirements of these regulations by the concern and the new owners or the grant of a waiver to § 124.317.

(j) The ownership limitations set forth in paragraphs (g), (h) and (i) of this section and paragraph (a)(5) of § 124.104 do not apply to individuals or concerns with ownership interests of less than 5 percent of a concern which is a Program Participant or applicant. A Program Participant's request for SBA's approval for the issuance of a public offering will be treated as a request for a change of ownership in accordance with the provisions of § 124.317. Such request will also cause SBA to examine the concern's continued need for access to the business development resources of the 8(a) program.

§ 124.104 Control and management.

Except for concerns owned by Indian tribes and Native Hawaiian Organizations as defined in § 124.100 (m) and (r), an applicant concern's management and daily business operations must be controlled by an owner(s) of the applicant concern who has (have) been determined to be socially and economically disadvantaged. (See § 124.112 for the requirements for tribally-owned entities and § 124.113 for requirements for concerns owned by Native Hawaiian Organizations.) In order for a disadvantaged individual to be found to control the concern, that individual must have managerial and technical experience and competency directly related to the primary industry in which the applicant concern is seeking 8(a) certification. In addition, for those industries requiring professional training and/or licensing (i.e., public accountancy, law, professional engineering, asbestos removal, etc.), SBA must determine that the individual(s) upon whom eligibility is based has (have) the necessary training and/or hold the requisite license(s).

(a) Individuals who are not socially and economically disadvantaged may be involved in the management of an applicant concern, and may be stockholders, partners, officers, and/or directors of such concern. Such individual(s), their spouses or immediate family members who reside in the individual's household may not, however:

(1) Be former employers of the disadvantaged owner(s) of the applicant or 8(a) concern.

(2) Be an owner, stockholder, partner, officer, director or manager of another firm in the same or similar line of business as the applicant or 8(a) concern.

(3) Exercise actual control or have the power to control the applicant or 8(a) concern.

(4) Receive excessive compensation for personal services from the applicant or 8(a) concern as directors or employees. Compensation for the personal services of a nondisadvantaged owner, his/her spouse or immediate family member residing in the same household will be deemed excessive if it exceeds the compensation to be received by any of the individuals upon whom eligibility is based; provided that with the written approval of the AA/MSB&COD or designee, an individual upon whom eligibility is based may elect to take a lower salary than such a nondisadvantaged individual if it is demonstrated to be in the best interests of the applicant or 8(a) concern.

(5) Have an ownership interest in another 8(a) concern subject to the exception set forth in paragraph (j) of § 124.103.

(b) The AA/MSB&COD may allow exceptions to the prohibitions set forth in paragraphs (a) (1), (4) and (5) of this section if requested to do so in writing and if it is established that the contemplated relationship between the nondisadvantaged individual and the disadvantaged individual or applicant concern does not give the former actual control or the potential to control the applicant or 8(a) concern and such relationship is in the best interest of the applicant or 8(a) concern.

(c) With respect to the situation described in paragraph (a)(3) of this section, nondisadvantaged individuals may be found to control or have the power to control in any of the following circumstances, which are illustrative only and not all inclusive:

(1) Nondisadvantaged individuals control the board of directors of the 8(a) concern either directly through majority membership, or indirectly, if the by-laws allow nondisadvantaged individuals to block any action proposed by the disadvantaged individuals through negative control. For example, an equal number of disadvantaged and nondisadvantaged directors could create negative control.

(2) A nondisadvantaged individual, as an officer or member of the Board of Directors of the 8(a) concern, or through stock ownership, has the power to control day-to-day direction of the business affairs of the concern.

(3) The nondisadvantaged individual provides critical financial or bonding support or licenses to the 8(a) concern which directly or indirectly allows the nondisadvantaged individual to gain control or direction of the 8(a) concern.

(4) A nondisadvantaged individual exercises voting control of the Participant through a nominee(s).

(5) A nondisadvantaged individual controls the corporation or the individual disadvantaged owners through loan arrangements.

(6) Other contractual relationships exist with nondisadvantaged individuals, the terms of which would create control over the disadvantaged concern.

(d) An applicant concern must be managed on a full-time basis by one or more persons who have been found by SBA to be socially and economically disadvantaged, and such person(s) must possess requisite management and technical capabilities as determined by SBA. Such individual must hold the position of President or Chief Executive Officer. This precludes outside employment or other business interests by the individual which conflict with the management of the firm or hinder it in achieving the objectives of its business development plan. Any disadvantaged person upon whom 8(a) eligibility is based, who is engaged in the management and daily business

operations of the 8(a) concern and who wishes to engage in outside employment must notify SBA of the nature and anticipated duration of the outside employment prior to engaging in such employment. SBA will review such notification for compliance with the requirement of day-to-day management and control of the 8(a) concern.

(e) The socially and economically disadvantaged individual(s) upon whom eligibility is based shall control the Board of Directors of an applicant or 8(a) concern, either in actual numbers (*e.g.*, in a concern having a three-person Board of Directors where each Director has one vote, there must be at least two disadvantaged individuals on the Board) or through voting rights (*e.g.*, in a concern having a two-person Board of Directors where one individual on the Board is disadvantaged and one is not, the disadvantaged vote must be weighted—worth more than one vote—in order for the concern to be eligible for 8(a) participation). All arrangements regarding the structure and voting rights of the Board and its members must comply with applicable state laws.

§ 124.105 Social disadvantage.

(a) *General.* Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identities as members of groups without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control.

(b) *Members of designated groups.* (1) In the absence of evidence to the contrary, the following individuals are presumed socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Kampuchea, Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam or Samoa; Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal); and members of other groups designated from time to time by SBA according to procedures set forth at paragraph (d) of this section.

(2) An individual seeking socially disadvantaged status as a member of a designated group may be required to demonstrate that he/she holds himself/herself out and is identified as a member of a designated group if SBA has reason to question such individual's status as a group member.

(c) *Individuals not members of designated groups.* (1) An individual who is not a member of one of the above-named groups must establish his/her individual social disadvantage on the basis of clear and convincing evidence. A clear and convincing case of social disadvantage must include the following elements:

(i) The individual's social disadvantage must stem from his or her color, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause not common to small business persons who are not socially disadvantaged.

(ii) The individual must demonstrate that he or she has personally suffered social disadvantage, not merely claim membership in a non-designated group which could be considered socially disadvantaged.

(iii) The individual's social disadvantage must be rooted in treatment which he or she has experienced in American society, not in other countries.

(iv) The individual's social disadvantage must be chronic and substantial, not fleeting or insignificant.

(v) The individual's social disadvantage must have negatively impacted on his or her entry into and/or advancement in the business world. SBA will entertain any relevant evidence in assessing this element of an applicant's case. SBA will particularly consider and place emphasis on the following experiences of the individual, where relevant:

(A) *Education.* SBA shall consider, as evidence of an individual's social disadvantage, denial of equal access to institutions of higher education; exclusion from social and professional association with students and teachers; denial of educational honors; social patterns or pressures which have discouraged the individual from pursuing a professional or business education; and other similar factors.

(B) *Employment.* SBA shall consider, as evidence of an individual's social disadvantage, discrimination in hiring; discrimination in promotions and other aspects of professional advancement; discrimination in pay and fringe benefits; discrimination in other terms and conditions of employment; retaliatory behavior by an employer; social patterns or pressures which have channelled the individual into nonprofessional or non-business fields; and other similar factors.

(C) *Business history.* SBA shall consider, as evidence of an individual's social disadvantage, unequal access to credit or capital; acquisition of credit or capital under unfavorable circumstances; discrimination in receipt (award and/or bid) of government contracts; discrimination by potential clients; exclusion from business or professional organizations; and other similar factors which have impeded the individual's business development.

(d) *Socially disadvantaged group inclusion*—(1) *General.* Upon an adequate showing to SBA by representatives of an identifiable group that the group has suffered chronic racial or ethnic prejudice or cultural bias, and upon the request of the representatives of the group that SBA do so, SBA shall publish in the **Federal Register** a notice of its receipt of a request that it consider a group not specifically named in section 201 of Pub. L. 95–507 to have members which are socially disadvantaged because of their identification as members of the group for the purpose of eligibility for the 8(a) program. The notice shall adequately identify the group making the request, and if a hearing is requested on the matter and such request is granted, the time, date and location at which such hearing is to be held. All information submitted to support a request should be addressed to the AA/MSB&COD.

(2) *Standards to be applied.* In determining whether a group has made an adequate showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this regulation, SBA shall determine:

(i) Whether the group has suffered the effects of prejudice, bias, or discriminatory practices;

(ii) Whether such conditions have resulted in economic deprivation for the group of the type which Congress has found exists for the groups named in Pub. L. 95–507; and

(iii) Whether such conditions have produced impediments in the business world for members of the group over which they have no control and which are not common to all small business owners. If it is demonstrated to SBA by a particular group that it satisfies the above criteria, SBA will publish a notice under paragraph (d)(1) of this section.

(3) *Procedure.* Once a notice is published under paragraph (d)(1) of this section, SBA shall adduce further information on the record of the proceeding which tends to support or refute the group's request. Such information may be submitted by any member of the public, including Government representatives and any

member of the private sector. Information may be submitted in written form, or orally at such hearings as SBA may hold on the matter.

(4) *Decision.* Once SBA has published a notice under paragraph (d)(1) of this section, it shall afford a period of not more than thirty (30) days for public comment concerning the petition for socially disadvantaged group status. It shall complete the reception of comments, including the holding of hearings within such comment period. Thereafter, SBA shall consider all information received and shall render its final decision within 60 days of the close of the comment period. Such decision shall be published as a notice in the **Federal Register**. Concurrent with the notice, SBA shall provide the petitioners of its final decision in writing.

§ 124.106 Economic disadvantage.

(a) *Economic disadvantage for the 8(a) program.* (1)(i) For purposes of the 8(a) program, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business who are not socially disadvantaged and such diminished opportunities have precluded or are likely to preclude such individuals from successfully competing in the open market. In determining economic disadvantage for purposes of 8(a) program eligibility, SBA shall compare the applicant concern's business and financial profile with profiles of businesses in the same or similar line of business which are not owned and controlled by socially and economically disadvantaged individuals.

(ii) This program is not intended to assist concerns owned and controlled by socially disadvantaged individuals who have accumulated substantial wealth, who have unlimited growth potential or who have not experienced or have overcome impediments to obtaining access to financing, markets and resources.

(2) *Factors to be considered.* In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual, SBA will consider factors relating both to the applicant concern and to the individual(s) claiming disadvantaged status. Factors to be analyzed depend upon the particular primary industry in which the applicant concern is involved and fall into three general categories: the personal financial condition of the individual(s) claiming disadvantaged status, including that individual's access to credit and capital; the financial condition of the applicant concern; and the applicant concern's access to credit, capital and markets.

(i) *Personal financial condition of the individuals claiming disadvantaged status.* This criterion is designed to assess the relative degree of economic disadvantage of the individual, as well as the individual's potential to capitalize or otherwise provide financial support for the business. The specific factors to be considered include, but are not limited to: the individual's personal income for at least the past two years; total fair market value of all assets; and, the personal net worth of the individual and his/her spouse, if married, subject to the exclusions set forth in paragraph (b)(1)(i) of this section.

(A) When married, an individual upon whom eligibility is based shall submit a joint financial statement. However, a joint financial statement is not required if the individual and his/her spouse are subject to a legal separation.

(B) Whenever SBA calculates the personal net worth of an individual claiming disadvantaged status for purposes of the 8(a) program, SBA shall exclude the individual's ownership interest in the applicant or participating 8(a) concern and the equity in his/her primary personal residence, (including the equity of both spouses, if married) but shall not exclude any portion of such equity in his/her primary residence which is attributable to excessive withdrawals from the applicant or participating 8(a) concern.

(C) Whenever SBA calculates the personal net worth of an individual claiming to be an Alaska Native, as defined in § 124.100(a), SBA shall include assets and income from sources other than an Alaska Native Corporation, as defined in § 124.100(b), and shall exclude from such calculation any of the following which the individual receives from any Alaska Native Corporation:

(*1*) Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum;

(*2*) Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

(*3*) A partnership interest;

(*4*) Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

(*5*) An interest in a settlement trust.

(ii) *Business financial condition.* This criterion will be used to provide a financial picture of a firm at a specific point in time in comparison to other concerns in the same or similar line of business which are not owned and controlled by socially and economically disadvantaged individuals. In evaluating a concern's financial condition, SBA's consideration will include, but not be limited to, the following factors: Business assets, revenues, pre-tax profit, net worth of the concern, including the value of the investments in the concern held by the individual claiming disadvantaged status, the return on assets, the return on investments, return on sales, ratio of current assets to current liability (current ratio), the ratio of the concern's sales to the compensation of its officers, the ratio of the concern's sales to its working capital, the ratio of the concern's debt to its net worth.

(iii) *Access to credit and capital.* This criterion will be used to evaluate the ability of the applicant concern to obtain the external support necessary to operate a competitive business enterprise. In making the evaluation, SBA shall consider the concern's access to credit and capital, including, but not limited to, the following factors: Access to long-term financing; access to working capital financing; equipment trade credit; access to raw materials and/or supplier trade credit; and bonding capability.

(b) *Economic disadvantage for the 8(d) Subcontracting Program, Small Disadvantaged Business Set-Asides, Small Disadvantaged Business Evaluation Preferences and for any other Federal procurement programs requiring SBA's determination of disadvantaged status.* For purposes of the section 8(d) subcontracting program and other programs requiring SBA's determination of disadvantaged status, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and whose diminished opportunities have precluded or are likely to preclude such individuals from successfully competing in the open market. In determining economic disadvantage for the 8(d) subcontracting program, small disadvantaged business set-asides and small disadvantaged business evaluation preferences, SBA will consider the factors set forth in paragraph (a) of this section but will apply standards to each factor that are less restrictive than those applied when determining economic disadvantage for purposes of the 8(a) program. This

approach corresponds to the Congressional intent that partial or complete achievement of a concern's 8(a) program business development goals should not necessarily preclude its participation in other Federal procurement programs for concerns owned and controlled by socially and economically disadvantaged individuals.

§ 124.107 Potential for success.

(a) SBA will approve a concern for program participation only when it finds that the applicant concern possesses the potential for success. In determining whether a concern has potential for success, SBA will look at a number of factors including, but not limited to, the technical and managerial experience and competency of the individual(s) upon whom eligibility is based, the financial capacity of the applicant concern and the concern's record of performance on previous Federal and private sector contracts in the primary industry in which the concern is seeking 8(a) certification. SBA will examine each of these factors to determine whether the otherwise eligible applicant concern has the potential to successfully perform subcontracts awarded under the 8(a) program and meet the business development objectives and goals of the program.

(b) Generally, if an applicant concern has been in business in the primary industry classification in which it seeks 8(a) certification for two full years as evidenced by income tax returns showing revenues for each of the years, and if the concern has a proven performance record and is financially sound, SBA will find it to possess the requisite potential for success. In extraordinary circumstances, an applicant concern which has not been in business in its primary industry classification for two full years may be found to possess the potential for success if all of the following conditions are met:

(1) The disadvantaged person(s) upon whom eligibility is based has (have) outstanding business experience, technical expertise, and educational background directly related to the applicant concern's primary industry classification.

(2) The applicant concern is adequately capitalized.

(3) The disadvantaged person(s) upon whom eligibility is based has (have) demonstrated strong management skills.

(4) The applicant concern's existence as a functional business entity is not contingent upon acceptance into the 8(a) program.

(c) An applicant concern shall not be denied admission into the program due solely to a determination that specific contract opportunities are unavailable to assist in the development of the concern unless:

(1) The Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(2) The purchase of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program Participants providing the same or similar items or services.

(d) Even though an applicant concern meets all of the eligibility criteria established in these regulations, the AA/MSB&COD has the authority to decline an otherwise eligible concern based on the lack of SBA resources to serve the applicant concern. A determination to decline the application based on the lack of SBA resources must be accompanied by a written statement that SBA resources, particularly personnel, are inadequate or unavailable to serve the applicant concern.

§ 124.108 Additional 8(a) program eligibility requirements.

(a) *Individual character review.* If, during the processing of an application, adverse information is obtained from the section 8(a) program applicant or a credible source regarding possible criminal conduct by an applicant concern or any of its principals, no further action will be taken on the application until SBA's Inspector General has evaluated that information and has advised the AA/MSB&COD of his or her findings. The AA/MSB&COD will consider those findings when evaluating the application.

(b) *Standards of conduct.* The SBA Standards of Conduct regulations, 13 CFR Part 105, *et seq.*, apply to eligibility questions involving SBA employees and their relatives. In particular, see §§ 105.404 and 105.506 of this title prohibiting certain SBA employees and former employees from, among other things, holding an ownership interest in an 8(a) concern.

(c) *Eligibility limitations.* (1) Except for Indian tribes, once a concern or disadvantaged individual upon whom eligibility was based has participated in the 8(a) program and the concern has exited the program by termination, graduation, voluntary withdrawal or expiration of its program term, neither the concern nor any of the individuals upon whom program eligibility was based shall be eligible to reapply for program participation. *See* § 124.112 of this part regarding eligibility limitations for Indian tribes.

(2) An individual will be found to have used his or her eligibility for the 8(a) program if he or she has claimed disadvantaged status by completing the appropriate SBA forms and SBA has approved the applicant concern's entry into the 8(a) program.

(3) Use of eligibility will take effect on the date of the concern's approval into the program.

(4) After an 8(a) concern exits the program, a disadvantaged owner of that concern may hold an ownership interest in another 8(a) concern provided that the concern is not in the same or similar line of business. In these instances, for purposes of 8(a) participation only, such an individual will be deemed to be a non-disadvantaged owner of that concern and criteria restricting non-disadvantaged individual participation shall apply. *See* §§ 124.103 and 124.104 of this part.

(5) Transfer of the ownership and control of an 8(a) participant to one or more other individuals does not terminate such concern's eligibility for the program provided that SBA determines the transferee(s) to be socially and economically disadvantaged or grants a waiver pursuant to § 124.317. However, the 8(a) concern's Program Term as described in § 124.110 is in no way affected by such transfer.

(d) *Manufacturers and regular dealers.* (1) For purposes of program entry, each applicant concern whose primary industry classification is as a manufacturer or supplier of materials, supplies, articles and equipment must be determined to be a manufacturer or regular dealer as defined in the Walsh-Healey Public Contracts Act Regulations found at 48 CFR Subpart 22.6.

(2) Participants in the developmental stage of 8(a) program participation may be eligible for two exemptions from the contingent agreement requirements of the Walsh-Healey Public Contracts Act, *see*, § 124.304(d). However, the availability of such exemptions during the Program Term in no way affects the requirement that an applicant concern comply with the provisions of paragraph (d)(1) of this section.

(e) Immediate family members living in the same household may not each use their individual disadvantaged status to qualify more than one business concern for section 8(a) program participation if the concerns are in the same or similar line of business. When the concerns are in separate lines of business, each applicant must establish that the

concerns are separately owned, managed and controlled. (For size limitations *see* § 121.3(a)(ii) of this title.)

§ 124.109 Ineligible businesses.

(a) *Brokers and packagers.* Brokers and packagers are ineligible to participate in the 8(a) program. These types of businesses do not satisfy the definition of a manufacturer or regular dealer, as stated in § 124.100.

(b) *Franchises.* Except for those admitted to the 8(a) program prior to the effective date of these regulations, franchises are ineligible to participate in the section 8(a) program.

(c) *Debarred or suspended person or concern.* Pursuant to 48 CFR Chapter I, Subpart 9.4, or 13 CFR Part 145, individuals or concerns who are debarred, suspended, voluntarily excluded or are found to be an ineligible bidder by any contracting agency of the Federal Government are ineligible for admission into the 8(a) program during the period of debarment, suspension, voluntary exclusion or status as ineligible. Prior to approval for admission to the 8(a) program, the applicant must certify that both the applicant concern and the disadvantaged individual(s) upon whom eligibility is based are not at that time debarred, suspended, voluntarily excluded or otherwise an ineligible bidder.

(d) *Non-profit organizations.* A non-profit organization does not meet the general definition of a concern as set forth in §§ 121.3(b) and 124.100(d) of these regulations and is, therefore, ineligible for 8(a) program participation (*see* § 124.100(g)). Nothing in this paragraph affects the eligibility of a for-profit concern owned and controlled by a Hawaiian Native Organization, Indian tribe or Alaska Native Corporation (*see* §§ 124.112 and 124.113 of this part).

(e) *Concerns owned by other disadvantaged concerns.* A concern which is owned in whole or in part by another business concern and relies on the disadvantaged status of that concern to claim disadvantaged status is ineligible for 8(a) program participation. These types of businesses do not meet the individual disadvantaged ownership requirements of the Small Business Act and the regulations as set forth in § 124.103.

§ 124.110 Program term.

(a) Each concern certified for program participation on or after November 15, 1988, is subject to a Program Term of nine years from the date of such certification. The term will consist of two stages: the developmental stage and the transitional stage, which are described in § 124.303 of this part. Nothing in this subsection shall be construed to limit SBA from initiating graduation, termination or suspension actions pursuant to §§ 124.208, 124.209 and 124.211 or to prohibit a participant from voluntarily withdrawing from the program.

(b) A concern is subject to a revised program term if the following conditions are met:

(1) The concern was a Program Participant as of September 1, 1988 or approved for 8(a) program participation between September 1, 1988 and November 15, 1988; and

(2) The concern did not voluntarily withdraw from the 8(a) program and was not graduated or terminated pursuant to §§ 124.208 and 124.209 between September 1, 1988 and November 15, 1988.

The revised Program Term shall be the greater of nine years from the date of the Participant's first contract pursuant to section 8(a) or the Participant's Fixed Program Participation Term (FPPT) expiration date, including any extension thereof, plus 18 months, whichever is greater.

(c) Once a Program Term has been established or revised in accordance with paragraphs (a) and (b) of this section, SBA is statutorily prohibited from extending such term beyond the specified expiration date.

§ 124.111 Continued 8(a) program eligibility.

(a) *Standards.* In order for a concern to remain eligible for program participation, it must continue to meet all eligibility criteria contained in §§ 124.101 through 124.109. Failure to do so will cause SBA to initiate a graduation or termination proceeding in accordance with §§ 124.208 and 124.209.

(b) *Submissions supporting continued eligibility.* As part of its annual review, each Program Participant shall annually submit to the Division of Program Certification and Eligibility and to the servicing field office the following:

(1) A certification that it meets the 8(a) program eligibility requirements as set forth in §§ 124.101 through 124.109;

(2) Personal financial statement for each disadvantaged owner;

(3) A record of all payments (including loans and advances) made by the Participant to each of its owners or to any person or entity affiliated with such owners; and

(4) Such other information as SBA may deem necessary. For other required annual submissions, *see* § 124.601.

(c) *Economic disadvantage eligibility reviews.* (1) Upon receipt of specific and credible information alleging that a Program Participant no longer meets the requirements of economic disadvantage for continued program eligibility, SBA shall conduct a review of the concern's eligibility for continued participation in the Program.

(2) (i) If, based on information received from the Participant or elsewhere, SBA has reason to believe that the Participant no longer meets the standards of economic disadvantage as set forth in § 124.106, SBA shall conduct a review to determine whether the Participant and its disadvantaged owners continue to meet such standards.

(ii) Sufficient reasons for SBA to conclude that an 8(a) Participant is no longer economically disadvantaged may include, but are not limited to: demonstrated access of the concern and/or its owners to a substantial new source of capital or loans, an unusually large amount of funds withdrawn from the concern by its owners, or an unusually high personal net worth of the disadvantaged owner(s), not including the owner's equity in the 8(a) concern and in his/her primary personal residence.

(3) If SBA determines, pursuant to paragraphs (c)(1) or (c)(2) of this section, that a Program Participant and/or its disadvantaged owner(s) are no longer economically disadvantaged, SBA shall initiate a graduation proceeding under § 124.208.

(4) If, based on information received from the Participant or elsewhere, SBA has reason to believe that an excessive amount of funds or other assets has been withdrawn from the Participant for the personal benefit of the disadvantaged owner(s) or that of any person or entity affiliated with such owner(s), SBA shall conduct a review to determine whether such withdrawal was detrimental to the achievement of the targets, objectives and goals of the Participant's business plan.

(5) If SBA determines pursuant to paragraph (c)(4) of this section, that funds or other assets have been withdrawn to the detriment of the achievement of the targets, objectives and goals of the Participant's business plan, SBA shall initiate a termination proceeding under § 124.209 or shall require an appropriate reinvestment of funds or other assets and such other actions as SBA may deem necessary to counteract the detrimental withdrawals.

(d) *Eligibility reviews.* If on the basis of information submitted pursuant to paragraph (b) or upon information received from any source, SBA has reason to believe the Program Participant no longer meets the

eligibility criteria (other than economic disadvantage), SBA shall conduct a review of the Participant's 8(a) program eligibility. If as a result of such review, SBA determines such Participant may no longer be eligible for program participation, SBA shall initiate termination proceedings under § 124.209.

§ 124.112 Concerns owned by Indian tribes.

(a) *General.* (1) Small business concerns owned by Indian tribes are eligible for participation in the section 8(a) program, provided that certain conditions are met as described below. The term Indian Tribe is defined in § 124.100(m) of this part.

(2) Small business concerns owned and controlled by Indian tribes are generally considered socially and economically disadvantaged for purposes of participation in programs authorized by section 8(d) of the Small Business Act, section 1207(a) of the Defense Authorization Act of 1987 and any other program, except the 8(a) program, which requires social and economic disadvantaged status as a condition of eligibility. If such disadvantaged status is challenged under Subpart B of this part, SBA will evaluate the disadvantaged status of the tribally owned concern using the criteria set forth in this section and § 125.106 of this part, as appropriate.

(3) Small business concerns owned and controlled by Alaska Native corporations (ANC) are eligible for participation in the section 8(a) program, subject to the same conditions as apply to tribally-owned concerns and are described at paragraphs (b) through (e) of this section with the following exceptions which apply solely to ANC-owned concerns:

(i) In evaluating the economic disadvantage of the ANC, no consideration shall be given to assets or income derived from distributions of the Alaska Native Fund established by the Alaska Native Claims Settlement Act, Pub. L. 92–203, (1971). Such assets and income should be included but specifically identified on the ANC's financial statements.

(ii) Alaska Natives and descendants of Natives must own a majority of both the total equity of the ANC and the total voting powers to elect directors of the ANC through their holdings of settlement common stock. Settlement common stock means stock of an ANC issued pursuant to 43 U.S.C. 1606(g)(1) and which is subject to the rights and restrictions listed in 43 U.S.C. 1606(h)(1).

(iii) Even though an ANC can be either for profit or non-profit, a small business concern owned and controlled by ANC must be for profit to be eligible for the 8(a) program. The concern will be deemed owned and controlled by the ANC for purposes of program eligibility so as to satisfy paragraph (a)(3) of this section where the majority of stock or other ownership interest is held by the ANC and holders of its settlement common stock. Both a majority of the total equity and total voting power must be so held.

(iv) An Alaska Native who holds Settlement Common Stock will be treated as a tribal member for purposes of the control and management requirements of paragraph (c)(4)(i) of this section. Officers or directors of an ANC will be treated as members of tribal council for purposes of paragraph (c)(4)(ii) of this section.

(b) *Tribal eligibility.* In order to qualify a concern which it owns and controls for participation in the 8(a) program, an Indian Tribe itself must meet the conditions set forth in paragraphs (b) (1) through (2) of this section. Once an Indian tribe has so established its disadvantaged status, it need not reestablish such status in order to have other businesses that it owns certified for 8(a) program participation, unless specifically required to do so by the AA/MSB–COD or his/her designee. The AA/MSB–COD, or designee, may require proof of tribal eligibility during the program participation of any tribally-owned business or at any time during the processing of an 8(a) program application by a tribally-owned concern. However, nothing in this paragraph affects the requirement that each tribally-owned concern seeking to be certified for 8(a) Program participation comply with the provisions of paragraph (c) of this section.

(1) *Social disadvantage.* An Indian tribe meeting the definition set forth in § 124.100(m) of this part shall be deemed socially disadvantaged. Individual tribal members responsible for control and management upon whom eligibility is based, pursuant to paragraph (c)(4) of this section, are considered socially disadvantaged Native Americans absent evidence to the contrary as provided at § 124.105(b).

(2) *Economic disadvantage.* In order to be eligible to participate in the 8(a) program the Indian tribe must demonstrate to SBA, that the tribe itself is economically disadvantaged. This shall involve the consideration of available data showing the tribe's economic condition, including but not limited to, the following information:

(i) The number of tribal members.

(ii) The present tribal unemployment rate.

(iii) The per capita income of tribal members excluding judgment awards.

(iv) The percentage of the local Indian population below the poverty level.

(v) The tribe's access to capital markets.

(vi) The tribal assets as disclosed in a current tribal financial statement. The statement should list all assets including those which are encumbered or held in trust, but the status of those encumbered or trust assets should be clearly delineated.

(vii) A list of all wholly or partially owned tribal enterprises or affiliates and the primary industry classification of each, as defined in § 124.100(z). The list must also specify the members of the tribe who manage or control such enterprises or serve as officers or directors.

(viii) Other information usually evaluated by SBA in order to determine economic disadvantage as described in § 124.106.

(3) *Application process—forms and documents required.* In order to establish tribal eligibility to qualify for the 8(a) program, the Indian tribe must submit the forms and documents required of 8(a) applicants generally as well as the following material:

(i) A copy of the tribe's governing document(s) such as its constitution or business charter.

(ii) Evidence of its recognition as a tribe eligible for the special programs and services provided by the United States or by its state of residence.

(iii) Copies of its articles of incorporation and bylaws as filed with the organizing or chartering authority, or similar documents needed to establish and govern a non-corporate legal entity.

(iv) Documents or materials needed to show the tribe's economically disadvantaged status as described in paragraph (b)(2) of this section.

(c) *Business eligibility.* In order to be eligible to participate in the 8(a) program, a concern which is owned by an eligible Indian tribe must meet the conditions set forth in paragraphs (c) (1) through (6) of this section.

(1) *Legal business entity organized for profit and susceptible to suit.* The applicant or participating concern must be a separate and distinct legal entity organized or chartered by the tribe, or Federal or state authorities. The concern must waive any sovereign immunity which may attach by reason of ownership by the tribe. Its articles of incorporation must contain express sovereign immunity waiver language, or a "sue and be sued" clause which designates United States Federal Courts to be among the courts of competent

jurisdiction. Also, the concern must be organized for profit, and the tribe must possess economic development powers in the tribe's governing documents.

(2) *Size.* (i) A tribally-owned applicant concern must qualify as a small business concern as defined for purposes of Government procurement in Part 121 of this title. The particular size standard to be applied shall be based on the primary industry classification of the applicant concern. Ownership by the tribe will not, in and of itself, cause affiliation with the tribe or with other entities owned by the tribe. However, affiliation with other tribally-owned entities may be caused by circumstances other than tribal ownership. (*See* § 121.3(a) of this title regarding affiliation.)

(ii) Except as provided in paragraph (c)(2)(iii) of this section, a tribally-owned Program Participant must certify to SBA that it is a small business pursuant to the provisions of § 121.4(g)(2) of this title for the purpose of performing each individual contract which it is awarded.

(iii) During its Program Term, a tribally-owned Program Participant may, for up to two 8(a) contracts, be a party to a joint venture which exceeds the applicable size standard, if the joint venture is:

(A) 51 Percent or more owned and controlled by the tribally-owned Participant;

(B) Is located on the tribe's reservation or land owned by such tribe;

(C) Performs most of its activities on such reservation or tribally-owned land; and

(D) Employs members of the tribe for at least 50 percent of its total workforce.

(3) *Ownership.* For corporate entities, a tribe must own at least 50 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock. For new corporate entities, a tribe must own at least a 51 percent interest. No Indian tribe shall own more than one current or former 8(a) Program Participant having the same primary industry classification. Tribally-owned Program Participants are subject to the provisions of §§ 124.103 (c) and (d) relating to ownership by nondisadvantaged individuals and non-8(a) concerns.

(4) *Control and management.* (i) The management and daily business operations of a tribally-owned concern must be controlled by individual members of the tribe, who have not previously used any disadvantaged status individually which they may have to qualify a non-tribally-owned concern for 8(a) program participation, and who do not or have not manage(d) and control(led) more than one other tribally-owned 8(a) Program Participant. In addition, such managers must be found to possess the technical experience and expertise required in § 124.104(d). This paragraph does not preclude management of a tribally-owned concern by committees, teams, or Boards controlled by such individuals.

(ii) Members of the tribal council shall not participate in the daily management or on the board of directors of any tribally-owned 8(a) concern without obtaining prior written approval for such participation from SBA.

(iii) Except as permitted by paragraph (c)(4)(i) of this section, members of the management team, business committee members, officers, and directors are precluded from engaging in any outside employment or other business interests which conflict with the management of the concern or prevent the concern from achieving the objectives set forth in its business development plan. This is not intended to preclude participation in tribal or other activities which do not interfere with such individual's responsibilities in the operation of the applicant concern.

(5) *Location and economic benefit.* The primary economic benefits from the concern must accrue to the tribe. A concern located on a designated Indian reservation or on tribally-owned land will be presumed to provide an economic benefit, such as employment, to the tribal community. SBA may approve a location not on tribally owned land, if the applicant concern can demonstrate that similar economic benefits will accrue to the tribal community.

(6) *Other eligibility criteria.* A tribally-owned concern must also meet the eligibility criteria set forth in §§ 124.107 through 124.109.

(d) *Individual eligibility limitation.* Once a tribally-owned concern completes its 8(a) program participation, those individuals upon whom eligibility was based pursuant to paragraph (c)(4) of this section shall be deemed to have used their eligibility to qualify a concern for the 8(a) program. They may use their eligibility again only to qualify up to a total of two tribally-owned concerns.

(e) *Existing section 8(a) firms.* Tribally-owned concerns presently in the section 8(a) program must comply with the requirements of this section within 12 months from the effective date of these regulations. Failure to do so may result in the commencement of section 8(a) program termination proceedings.

§ 124.113 Concerns owned by Native Hawaiian organizations.

Concerns owned by Native Hawaiian Organizations as defined in § 124.100(s) are eligible for participation in the 8(a) program and other federal programs requiring SBA to determine social and economic disadvantage as a condition of eligibility. Such concerns must meet all eligibility criteria set forth in §§ 124.102 through 124.109 of this part.

§ 124.201 Processing applications.

(a) The AA/MSB&COD may take appropriate administrative actions to meet legislative requirements, including limiting the size of the portfolio to be served.

(b) Except as noted in paragraph (a) of this section, it is SBA's policy that an established or start-up business or an individual on behalf of such business has the right to apply for 8(a) assistance, whether or not there is an appearance of eligibility.

§ 124.202 Place of filing.

An application for admission is to be filed in the regional office of the Division of Program Certification and Eligibility serving the territory in which the principal place of business, as defined in § 124.100(aa), is located.

§ 124.203 Servicing office.

Once approved, a Program Participant will be serviced in the field office serving the territory in which the concern's principal place of business, as defined in § 124.100(aa), is located.

§ 124.204 Applicant representatives.

An applicant concern may employ at its option outside representatives in connection with an application for section 8(a) program participation. If the applicant chooses to employ outside representation such as an attorney, accountant, or others, the requirements of Part 103 of this title dealing with the appearance and compensation of persons appearing before SBA are applicable to the conduct of the representative. In addition, representation in proceedings before the Office of Hearings and Appeals shall be limited as provided in § 134.16 of this title.

§ 124.205 Forms and documents required.

Each 8(a) applicant concern must submit the forms and attachments thereto required by the SBA when making application for admission to the section 8(a) program. Such forms and attachments will include, but are not limited to, financial statements and Federal personal and business tax returns.

§ 124.206 Approval and decline of applications for 8(a) program admission.

(a) *General.* The AA/MSB&COD is authorized to approve or decline applications for admission to the 8(a) program. However, denials of program admission based on his/her finding that the individual(s) claiming social and economic disadvantage are not socially and/or economically disadvantaged and/or that such individual(s) does (do) not own and/or does (do) not control the applicant concern, may be appealed to SBA's Office of Hearings and Appeals (OHA). The Division of Program Certification and Eligibility (the Division) will receive, review and evaluate all 8(a) applications. The Division will advise each program applicant within 15 days after the receipt of an application whether such application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. SBA will process an application for 8(a) program participation within 90 days of receipt by the Division of a complete application package. Incomplete application packages will not be processed.

(b) *Approval.* If the AA/MSB&COD finds that the applicant concern meets all eligibility criteria, he/she shall issue an approval letter to the concern. The date of the approval letter shall be the date of program certification for purposes of determining the concern's Program Term pursuant to § 124.110. A concern is not approved for participation in the 8(a) program until an approval letter is sent by the AA/MSB&COD to the ccncern. Up until that event occurs, any new information which could have an adverse affect on the application may be considered by the AA/MSB&COD. An applicant is not admitted to the 8(a) program, however, until the participation agreement is signed.

(c) *Decline.* If the AA/MSB&COD finds that an applicant concern does not meet all eligibility criteria, he/she will provide written notification of this finding to the applicant in a letter of decline. The letter of decline shall set forth findings based on the facts and in accordance with law and regulations for every material issue relating to each eligibility factor with specific reasons for each finding. The letter of decline shall inform the applicant of its rights to request reconsideration of the AA/MSB&COD's decision and/or to appeal such decision.

(1) *Reconsideration.* Every applicant has the right to request that the AA/MSB&COD reconsider his/her decline decision. Such request must be made in writing by certified mail, return receipt requested within 45 days of the date of service of the decline letter. In support of the reconsideration request, the applicant may submit in writing to the appropriate Regional Office of the Division any additional information and documentation pertinent to overcoming the reason(s) for the initial decline. If the concern requests reconsideration, the AA/MSB&COD will issue a written determination on the reconsideration within 45 days of receipt of the request by the Regional Office of the Division which processed the original application. The Agency's eligibility analysis on reconsideration will consider all eligibility factors in light of all information then available to the Agency, and may approve the application, decline it for any of the same reasons cited in the initial decline or decline it for reasons not previously identified. If, on reconsideration, the AA/MSB&COD finds that the applicant concern meets all eligibility criteria, he/she shall issue an approval letter to the concern. The date of the approval letter shall be the date of program certification for purposes of determining the concern's Program Term pursuant to § 124.110. If, on reconsideration, the AA/MSB&COD determines that the concern does not meet all eligibility criteria, he/she will notify the applicant of this decision by letter. Such letter shall set forth findings based on the facts and in accordance with law and regulations for every material issue relating to each eligibility factor with specific reasons for each finding. If the concern is being declined solely for reasons not identified in the initial decline, the concern will be advised that SBA will treat the decline as an initial decline, and that the concern will be afforded all rights which were available to it on its initial decline.

(2) *Appeal.* An unsuccessful applicant will have the right to appeal its decline to OHA if the application is denied based solely on a negative finding of one or more of the following criteria: social disadvantage, economic disadvantage, ownership or control. The applicant, at its option, may bring such appeal either after the initial decline or after a decline on reconsideration. Petitions of appeal must conform to the requirements of § 124.210 and will be handled in accordance with the procedures contained in § 124.210 and Part 134.

(3) *Final agency decision.* If a declined applicant does not request reconsideration of the decline or, if eligible under paragraph (c)(2) of this section, a declined applicant does not file an appeal with OHA within 45 days of the date of service of the decline letter, the determination of the AA/MSB&COD will become the final Agency decision. If the application is denied on reconsideration and the applicant does not have the right to appeal the denial under paragraph (c)(2) of this section, the decision of the AA/MSB&COD is the final Agency decision. If the applicant is entitled under paragraph (c)(2) of this section to an appeal, and exercises that right, the decision of the Administrative Law Judge shall be the final Agency decision.

(4) *Reapplication for program participation.* A concern which has been declined for 8(a) program admission may reapply for admission to the program 12 months after the date of the final Agency decision to decline.

§ 124.207 Program exit.

A concern participating in the 8(a) program may leave the program by any of the following means:

(a) Voluntary withdrawal.

(b) Expiration of the Program Term allowed by § 124.110;

(c) Graduation pursuant to the provisions of § 124.208;

(d) Termination pursuant to the provisions of § 124.209.

§ 124.208 Program graduation.

(a) *General.* When an 8(a) concern is recognized as successfully completing the 8(a) program by substantially achieving the targets, objectives and goals set forth in its business plan prior to the expiration of its program term, and has demonstrated the ability to compete in the marketplace without assistance under the 8(a) program, its participation within the program shall be determined by SBA to be completed and the firm shall be graduated from the program.

(b) *Graduation criteria.* In determining whether a concern has substantially achieved the goals and objectives of its business plan and has attained the ability to compete in the marketplace without 8(a) program assistance, the following factors, among others, shall be considered by SBA.

(1) Positive overall financial trends, including but not limited to:

(i) Profitability;

(ii) Sales, including improved ratio of non-8(a) sales to 8(a) sales;

(iii) Net worth, financial ratios, working capital, capitalization, access to credit and capital;

(iv) Ability to obtain bonding;

(v) A positive comparison of the 8(a) concern's business and financial profile with profiles of non-8(a) businesses in

the same area or similar business category; and

(vi) Good management capacity and capability.

(c) *Graduation procedures*—(1) *Letter of notification.* Upon determination by the SBA pursuant to paragraph (b) of this section that an 8(a) concern should be graduated from the 8(a) program, SBA shall notify the Participant in writing of its intent to graduate in a letter of notification. The letter of notification shall set forth findings, based on the facts and in accordance with law and regulations, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification shall also provide the Participant 45 days from the date of service of the letter to submit in writing information which would explain why the proposed basis of graduation is not warranted.

(2) *Second letter of notification.* After the 45 day response period has elapsed, the Division shall consider the proposed graduation, including information submitted by the Participant, if any. As appropriate, the Division shall notify the Participant that it will not recommend program graduation or that, despite the information that may have been provided, the basis for graduation continues to exist and that he/she intends to recommend to the AA/MSB&COD that the Participant be graduated. In instances where graduation will be recommended, the Division Director shall further notify the Participant that it will have a 45 day period from the date of service of the second letter of notification to submit to SBA such further information which would explain why the proposed graduation is not justified.

(3) *Recommendation of the Division.* Following the 45 day response period, the Division Director will consider the facts of the proposed graduation, including all information submitted by the Participant. If the Division Director determines that graduation is not appropriate, he/she will so notify the Participant within 15 days of the close of the response period. If the Division Director determines that graduation is appropriate, he/she will recommend in writing to the AA/MSB&COD, within 15 days of the close of the response period, that the Participant be graduated.

(4) *Decision of the AA/MSB&COD.* Upon the recommendation of the Division Director, the AA/MSB&COD will consider the proposed graduation and the written record supporting it. If the AA/MSB&COD determines that program graduation is warranted, he/she will issue a Notice of Program Graduation to the Participant. If not, he/she will so notify the Participant.

(5) *Notice requirements.* A Notice of Program Graduation shall conform to the form, filing and service requirements of Part 134 of this Title, under which the appeal proceeding shall be conducted. The Notice of Program Graduation shall set forth findings, based on the facts and in accordance with law and regulations, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The Notice of Program Graduation shall also advise the Program Participant that it may avail itself of an opportunity for an appeal by filing a petition in accordance with the provisions of § 124.210 and Part 134 of this title.

(6) *Appeal to Office of Hearings and Appeals.* Procedures governing appeals of program graduation to the Office of Hearings and Appeals are set forth in § 124.210 and Part 134.

(d) *Post graduation.* After the effective date of a program graduation as provided for herein, an 8(a) concern is no longer eligible to receive any 8(a) program assistance. Such concern is obligated to complete previously awarded 8(a) subcontracts, however.

§ 124.209 Program termination.

(a) *General.* Participation of a section 8(a) business concern in the section 8(a) program may be terminated by SBA prior to the expiration of the concern's Program Term for good cause. Examples of good cause include, but are not limited to, the following:

(1) Failure by the concern to continue to maintain its eligibility for program participation.

(2) Failure by the concern to maintain its status as a small business under the Small Business Act, as amended, and the regulations promulgated thereunder. *See* § 124.102.

(3) Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by the person(s) who has (have) been determined to be socially and economically disadvantaged pursuant to these regulations.

(4) Failure by the concern to obtain written approval from SBA any changes in ownership, management or control pursuant to §§ 124.103 and 124.104.

(5) Failure by the concern to disclose to SBA the extent to which nondisadvantaged persons or firms participate in the management of the section 8(a) business concern.

(6) A demonstrated pattern of failing to make required submissions or responses to the Administration in a timely manner, including:

(i) Failure by the concern to provide SBA with required quarterly or annual financial statements within 90 days of the close of the reporting period, or required audited financial statements within 180 days of the close of the reporting period. Failure to provide SBA with requested tax returns, reports, or other available data within 30 days of the date of request.

(ii) Failure by the concern to submit an updated business plan within 30 days of receipt of request, without an extension of time which has been approved by SBA.

(iii) Failure by the concern to provide documents or certifications of continuing eligibility or otherwise respond to requests for information relating to the section 8(a) program from SBA or other authorized government officials within the time frames provided for in the requests.

(7) Cessation of business operations by the concern.

(8) Failure by the concern to achieve the goals cited in its original or modified business plan as a result of repeated refusals to accept or utilize SBA assistance.

(9) Failure by the concern to pursue competitive and commercial business in accordance with the business plan, or failure to make reasonable efforts to achieve competitive status.

(10) Failure by the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 8(a).

(11) A pattern of inadequate performance of awarded section 8(a) procurement subcontracts by the concern.

(12) Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.

(13) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters.

(14) Diversion of funds or other assets from the section 8(a) business concern for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners which is detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan.

(15) Unauthorized use of business development expense funds and/or advance payment funds and/or SBA

direct, guaranty or immediate participation loan proceeds; or violation of an advance payment, business development expense agreement, or loan agreement.

(16) Failure by the concern to obtain prior SBA approval of any management agreement, joint venture agreement or other agreement relative to the performance of a section 8(a) subcontract. Violation of any requirement of a management, joint venture, or other agreement approved by SBA by either the section 8(a) concern or one of the joint venturers.

(17) Failure by the concern to obtain approval from SBA before subcontracting under a section 8(a) subcontract, or failure by the concern to abide by any conditions imposed by SBA upon such approval.

(18) Violation by the concern of a section 8(a) subcontract provision which prohibits contingent fees and gratuities; or failure to disclose to SBA fees paid or to be paid, or costs incurred or committed to third parties, directly or indirectly, in the process of obtaining section 8(a) contracts or subcontracts.

(19) Knowing submission of false information to SBA on behalf of a section 8(a) business concern by its principals, officers, or agents, or by its employees, where the principal(s) of the section 8(a) concern knows or should have known such submission to be false.

(20) Debarment, suspension, voluntary exclusion, or ineligibility of the concern or its principals pursuant to 13 CFR Part 145, FAR Subpart 9.4, 48 CFR Ch. 1, and 48 CFR Ch. 22, or any successor regulation.

(21) Conviction of the concern or the individual(s) upon whom 8(a) program eligibility is based for any offense indicating a lack of business integrity including but not limited to:

(i) Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;

(ii) Violation of the Organized Crime Control Act of 1970 (Pub. L. 91–452; 84 Stat. 922);

(iii) Embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a government contractor;

(iv) Violation of any Federal antitrust statute; or

(v) Commission of any felony not specifically listed above.

(vi) Violation of section 16 of the Small Business Act, (15 U.S.C. 645).

(22) Conviction of a nondisadvantaged owner or officer of the concern for any offense described in paragraph (a)(21) of this section, provided that one or more disadvantaged owners or officers of the concern abetted, conspired with or otherwise acquiesced in the owner's or officer's commission of the offense.

(23) Willful failure on behalf of an 8(a) business concern to comply with applicable labor standards and obligations.

(24) Violation of any terms and conditions of the 8(a) Program Participation Agreement.

(25) Willful violation by an 8(a) business concern, or any of its principals, of any rule or regulation of the Administration pertaining to material issues.

(b) *Termination procedures*—(1) *Letter of notification.* When SBA determines that grounds exist to terminate a concern's participation in the 8(a) program pursuant to this section, SBA shall notify the Participant in writing of its intent to terminate in a letter of notification. The letter of notification shall set forth findings, based on the facts and in accordance with law and regulations, for every material issue relating to the grounds upon which such termination would be based with specific reasons for each finding. The letter of notification shall provide the Participant 45 days from the date of service of the letter to submit in writing information which would eliminate the ground(s) for termination or would explain why the proposed ground(s) should not justify termination.

(2) *Second letter of notification.* After the 45-day response period has elapsed, the Division shall consider the proposed termination, including information submitted by the Participant, if any. The Division shall notify the Participant that the grounds for proposed termination have been eliminated or that, despite the information that may have been provided, some or all of the grounds for termination continue to exist. Where appropriate, the Division Director shall further notify the Participant that he/she intends to recommend to the AA/MSB&COD that the Participant be terminated from the program, and that, within 45 days of the date of service of the second letter of notification, the Participant may submit to SBA such further information as would eliminate the ground(s) for termination or would explain why the proposed ground(s) should not justify termination.

(3) *Recommendation of the Division.* Following the 45 day response period, the Division Director will have 15 days to consider the facts of the proposed termination, including all information submitted by the Participant and to notify the Participant of his/her recommendation to the AA/MSB&COD. If the grounds for proposed termination continue to exist, the Division Director will recommend in writing to the AA/MSB&COD that the Participant be terminated.

(4) *Decision of the AA/MSB&COD.* Upon the recommendation of the Division Director, the AA/MSB&COD will consider the proposed termination and the written record supporting it. If the AA/MSB&COD determines that a termination is warranted, he/ she will issue a Notice of Termination to the Participant. If not, he/she will so notify the Participant.

(5) *Notice requirements.* A Notice of Termination shall conform to the form, filing and service requirements of Part 134 of this title, under which the appeal proceeding shall be conducted. The Notice of Termination shall set forth findings, based on the facts and in accordance with law and regulations, for every material issue relating to the grounds upon which the termination is based. The Notice of Termination shall also advise the Program Participant that it may avail itself of an opportunity for an appeal by filing a petition in accordance with the provisions of § 124.210 and Part 134 of this title.

(6) *Appeal to Office of Hearings and Appeal.* Procedures governing appeals of program termination to the Office of Hearings and Appeals are set forth in § 124.210 and Part 134 of this title.

(c) *Post termination.* After the effective date of a program termination, a section 8(a) business concern is no longer eligible to receive any section 8(a) program assistance. Such concern is obligated to complete previously awarded section 8(a) subcontracts (see § 124.211 for Program Suspension).

§ 124.210 Appeals to SBA's Office of Hearings and Appeals.

(a) Except as provided in paragraph (c) of this section, an applicant concern or Program Participant shall be afforded the opportunity to appeal any of the following Agency determinations:

(1) Denial of program admission based solely on a negative finding(s) of social disadvantage, economic disadvantage, ownership or control pursuant to § 124.206;

(2) Graduation pursuant to § 124.208;

(3) Termination pursuant to § 124.209; or,

(4) Denial of a request to issue a waiver pursuant to § 124.317.

(b) The applicant or Participant concern may initiate such appeal by filing a petition in accordance with Part 134 of this title with SBA's Office of Hearings and Appeals (OHA) within 45 days of the date of service of the final Agency determination pursuant to paragraph (a) of this section. In addition to the requirements of § 134.11(a), the petition shall state, with specific reference to the determination and the record supporting such determination, the reasons why the determination is alleged to be arbitrary, capricious or contrary to law. Concurrent with its filing with OHA, the concern shall also serve the AA/MSB&COD with a copy of the petition, including all attachments.

(c) Appeal proceedings brought under the authority of this section shall be conducted by an Administrative Law Judge.

(d) The Administrative Law Judge selected to preside over an appeal shall decline to accept jurisdiction over any matter if:

(1) The appeal does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the determination, including appeals of proposed denials of 8(a) program admission which have been based in whole or in part on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership or control;

(2) The appeal is untimely filed under § 134.12 or is not otherwise filed in accordance with the requirements of this section and the rules of procedure set forth in Part 134 of this title; or

(3) The matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(e) Once the Administrative Law Judge accepts jurisdiction over an appeal, subsequent initiation of an adjudication of the matter by a court of competent jurisdiction will not preclude the Administrative Law Judge from rendering a final decision on the matter.

(f) Proceedings conducted under the authority of this section shall be conducted in accordance with the provisions of this section and Part 134 of this title.

(g) Unless it is established that the convenience and necessity of the parties requires otherwise, in the sole discretion of the Administrative Law Judge, any oral hearing conducted with respect to an appeal pursuant to paragraph (a) of this section shall be held in the Washington, DC area.

(h) (1) Except as provided in paragraph (h)(3) of this section, any proceeding conducted under the authority of paragraph (a) of this section shall be decided solely on a review of the written administrative record. The determination by the AA/MSB&COD or a designee for matters related to paragraphs (a)(1), (a)(2), and (a)(3) of this section, and the determination by the Administrator for matters related to paragraph (a)(4) of this section, shall be sustained unless such determination is found to be arbitrary, capricious, or contrary to law.

(2) If the Administrative Law Judge determines that, due to the absence in the written administrative record of the reasons upon which the determination in question was based, such administrative record is insufficiently complete to decide whether the determination is arbitrary and capricious or contrary to law, the case shall be remanded by the Administrative Law Judge to the AA/MSB&COD for further consideration in accordance with the terms of such remand. Such remand shall be for a period of no more than 10 working days. The ALJ shall retain jurisdiction of the matter during such period as the matter is on remand.

(3) (i) Neither the admission of evidence beyond the written administrative record, nor any form of discovery, will be permitted in proceedings under this section unless it is first determined by the Administrative Law Judge that the applicant concern or Participant, upon written submission, has made a substantial showing, based upon credible evidence, and not mere allegation, that the Agency determination in question may have resulted from bad faith or improper behavior. Prior to any such determination, the Agency shall be afforded an opportunity to respond in writing to the submission of the applicant concern or Participant. Upon a determination by the Administrative Law Judge that the applicant concern or Participant has made such a substantial showing, the Administrative Law Judge may permit appropriate discovery, and accept relevant evidence beyond the written administrative record, which is specifically limited to the alleged bad faith or improper behavior asserted by the applicant concern or Participant.

(ii) A determination by the Administrative Law Judge that the required showing set forth in paragraph (h)(3)(i) of this section has been made does not shift the burden of proof, which continues to rest with the applicant concern or the Participant.

(i) A decision rendered by the Administrative Law Judge under the authority of this section shall be the final decision of the Administration and shall be binding upon the parties and those within the employ of the Administration.

(j) Such decision shall be rendered, insofar as practicable, within ninety days after a petition for appeal is filed, and, in the event such 90-day time limit has not been met, the Administrative Law Judge shall indicate the reason therefor in the decision, when issued.

§ 124.211 Suspension of program assistance.

(a) Upon the issuance of a Notice of Termination, SBA may suspend contract support and all other forms of 8(a) program assistance to that concern for a period of time not to exceed the time necessary to resolve the issue of the concern's termination from the program under the procedures set forth in § 124.209 and in Part 134 of this title. The institution of such a suspension will not occur in conjunction with each proposed termination, but will only occur when SBA determines that suspension of the concern's program participation is in the best interests of the Government. For example, SBA will generally find that it is in the best interests of the Government to suspend a Participant where the proposed termination is based on fraud or the submission of false statements or program ineligibility.

(b) Immediately upon SBA's determination to suspend a section 8(a) concern, SBA will furnish that concern with a Notice of Suspension by certified mail, return receipt requested, to the last known address of the concern. If no receipt is returned within ten calendar days from the mailing of the notice, notice will be presumed to have occurred as of that time. The Notice of Suspension will provide the following information:

(1) The reason(s) for the suspension, which will be the grounds upon which the Notice of Termination has been issued;

(2) A statement that the suspension will continue pending the completion of further investigation or the termination proceeding or some other specified period of time;

(3) Notice that awards of competitive and non-competitive section 8(a) subcontracts, including those which have been "self-marketed" by an 8(a) concern, will not be made during the pendency of the suspension unless it is determined by the head of the relevant procuring agency or his/her authorized representative to be in the best interest of the Government to do so, *and* SBA adopts that determination;

(4) Notice that the concern is obligated to complete previously awarded section 8(a) subcontracts;

(5) Notice that the suspension is effective nationally throughout the SBA;

(6) A statement that a request for a hearing on the suspension will be considered by an Administrative Law Judge in SBA's Office of Hearings and Appeals (OHA), and granted or denied as a matter of his/her discretion.

(7) A statement that the firm's program term is suspended effective the date of the suspension and that it will resume only if the concern's participation in the program is not terminated.

(c) It is contemplated that in most cases a hearing on the issue of the suspension will be afforded if the Participant requests one. However, no hearing shall be granted if the suspension is based upon advice from either the Department of Justice or the Department of Labor that such a hearing would prejudice substantial interests of the Government.

(d) The applicant concern may appeal a Notice of Suspension by filing a petition in accordance with Part 134 of this title with OHA within 30 days of the date of service of a Notice of Suspension to paragraph (b) of this section. Concurrent with its filing with OHA, the concern shall also serve the AA/MSB&COD with a copy of the petition including all attachments.

(e) A request for a hearing on the suspension will be considered by an Administrative Law Judge in OHA, and granted as a matter of his/her discretion.

(f) Proceedings conducted under the authority of this section shall be conducted in accordance with the provisions of this section and Part 134 of this title.

(g) For any oral hearing convened pursuant to § 134.19 of this title resulting from a request filed in accordance with this section, the Administrative Law Judge shall give due regard to the convenience and necessity of the parties or their authorized representatives in designating the place of the oral hearing.

(h) A hearing on the suspension will commence as soon as possible following the decision of the Administrative Law Judge to grant a request, but in no case more than 20 calendar days after the Administrative Law Judge's ruling if the request is granted.

(i) At the close of such suspension hearing, the Administrative Law Judge shall issue a decision upholding or lifting the suspension. The decision of the Administrative Law Judge shall be the final Agency decision.

(j) Any program suspension which occurs in accordance with these regulations will continue in effect until such time as the SBA lifts the suspension or the section 8(a) business concern's participation in the program is fully terminated. If all program assistance to a section 8(a) business concern has been suspended under these regulations and the concern's participation in the program is not terminated, the suspension will be lifted and the Program Term remaining as of the effective date of Program Suspension will be restored to the concern. However, nothing in this paragraph precludes SBA from initiating termination, graduation or suspension proceedings at any time during the concern's Program Term.

(k) SBA does not recognize the concept of de facto suspension. Reinstatement of the remaining portion of a Program Term will occur only where a concern's program participation has been formally suspended by SBA in accordance with the procedures set forth in this section.

§ 124.300 Business development.

The regulations at § 124.301 through § 124.320 address the provision of various forms of assistance to 8(a) Program Participants to promote the business development of such concerns. Such assistance includes financial, management and technical assistance, and contract support.

§ 124.301 Development of business plan.

(a) *General.* In order to assist the SBA in determining the business development needs of each 8(a) Program Participant, each such Participant shall develop a comprehensive business plan, setting forth the Participant's business targets, objectives, and goals. The business plan shall be submitted to the SBA servicing field office in final form within 30 days after the Participant's receipt of notice of certification to participate in the 8(a) program. The Participant will not be eligible for 8(a) contracts until the SBA approves its business plan. The approved business plan will constitute the Participant's short and long term goals and the strategy for developmental growth to the point of economic survival independent of the 8(a) program.

(b) *Standard Industrial Classification (SIC) code designations.* The concern's primary industry classification as defined in § 124.100 and all related secondary Standard Industrial Classification (SIC) code designations will be stated in an 8(a) concern's original business plan and will be subject to change thereafter only if the conditions of § 124.302(c) are met. Once admitted to the 8(a) program, a concern will only be permitted to perform 8(a) contracts which are classified under approved SIC codes which appear in its business plan. An 8(a) concern may receive Federal contracts classified under SIC codes not contained in its business plan, provided it is qualified, under authority other than section 8(a) of the Small Business Act.

(c) *Contents of business plan.* The initial business plan shall contain at least the following:

(1) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant's prospects for profitable operations during the term of program participation and after graduation;

(2) An analysis of the Program Participant's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the Participant from receiving contracts other than those awarded through the 8(a) program;

(3) Specific targets, objectives, and goals for the business development of the Participant during the next two years, utilizing the results of the analyses conducted pursuant to paragraphs (c)(1) and (c)(2) of this section;

(4) Estimates of contract awards pursuant to section 8(a) and from other sources which would be needed by the Participant to meet the specific targets, objectives and goals for the years covered by the business plan; and

(5) Such other information as SBA may require.

§ 124.302 Review and modification of business plan.

(a) *Annual review.* Each Participant shall annually review its currently approved business plan with the Business Opportunity Specialist (BOS) and shall modify such plan as may be appropriate. Any modified plan shall be submitted to the BOS for approval. A currently approved plan shall be considered the applicable plan for all program purposes until the SBA approves in writing a modified plan. SBA shall establish an anniversary date for review of the Participant's business plan and contract support forecasts. The annual review of a Participant's business plan will generally occur within 15 working days before or after the anniversary of the firm's certification of 8(a) eligibility.

(b) *Contract support forecast.* Each Participant shall annually forecast in writing its needs for contract awards for the next program year and the succeeding program year during the

review of its business plan conducted under paragraph (a) of this section. Such forecast shall be included in the Participant's business plan. The forecast shall include:

(1) The aggregate dollar value of contract support to be sought under section 8(a) (sole source and competitive), reflecting compliance with the business mix requirements of § 124.312;

(2) The aggregate dollar value of non-8(a) contracts to be sought;

(3) The types of contract opportunities being sought, identified by the appropriate Standard Industrial Classification (SIC) code; and

(4) Such other information as may be requested by the SBA to aid in providing effective business development assistance to the Participant.

(c) *Changes in SIC code designations.* Requests for changes in SIC code designations stated in a business plan may be approved only by the appropriate Regional Administrator or his/her designee, and only if:

(1)(i) The requested SIC code is related to the primary industry of the 8(a) concern and represents a logical business progression for the concern;

(ii) The 8(a) concern has demonstrated capacity and capability to perform in the requested SIC code; and

(iii) Other applicable eligibility criteria (Walsh-Healey Act, the non-manufacturer rule, size rules, etc.) appear to be met; or

(2) SBA erred in omitting a previously requested SIC code, improperly classifying a business industry or making a typographical or other error in its letter of approval to the 8(a) concern.

(d) *Transition management plan.* Beginning in the first year of the transitional stage of program participation under § 124.303, each Participant shall annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations after graduation. The transition management plan should be submitted to the BOS at the same time other modifications are submitted pursuant to the annual review under paragraph (a) of this section. Such plan shall set forth the same information as required under paragraph (b) of this section for the initial plan, incorporate the competitive mix requirements of § 124.312, and provide specific transition steps the Participant will take to continue its business development after the expiration of its Program Term.

§ 124.303 Stages of 8(a) program participation.

(a) *General.* General program participation is divided into two stages—a developmental stage and a transitional stage. The developmental stage shall be 4 years and the transitional stage shall be 5 years unless the Participant has exited the program by one of the means set forth in § 124.112. The developmental stage is designed to assist Participants to overcome economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation is designed to assist Participants to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare Participants for leaving the 8(a) program.

(b) *Developmental stage of program participation.* A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the developmental stage of program participation:

(1) Sole source and competitive 8(a) contract support;

(2) Financial assistance pursuant to § 122.57 of this title;

(3) Pursuant to § 124.304, a maximum of two exemptions from the requirements of section 1(a) of the Walsh-Healey Act, 41 U.S.C. 35(a);

(4) Pursuant to § 124.305, a maximum of five exemptions from the requirements of the Miller Act, 40 U.S.C. 270a to 270d, that performance bonds be issued for the protection of the United States and payment bonds be issued for the protection of persons furnishing material and labor for the construction, alteration, or repair of public buildings or public works;

(5) Pursuant to § 124.306, financial assistance from SBA for skills training or upgrading for employees or potential employees of Program Participants;

(6) The transfer of technology or surplus property owned by the United States to Program Participants by grant, license, or sale. Technology or property transferred pursuant to this paragraph must be used by the Participant during the normal conduct of its business operation and cannot be sold or transferred to any other party (other than the Government) during such concern's Program Term and for one year thereafter. A Participant must agree to these conditions prior to any transfer of technology or property; and

(7) Training sessions to assist individuals and enterprises eligible to receive 8(a) contracts in the development of business principles and strategies to enhance their ability to compete successfully for contracts in the marketplace.

(c) *Transitional stage of program participation.* A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the transitional stage of program participation:

(1) The same assistance as that provided to Participants in the developmental stage under paragraphs (b)(1), (b)(2), (b)(6) and (b)(7) of this section;

(2) Training and technical assistance in transitional business planning.

(3) Assistance from procuring agencies (in cooperation with SBA) in forming joint ventures, leader-follower arrangements, and teaming agreements between the Participant and other Program Participants or other business concerns, in accordance with all applicable statutes and regulations, with respect to contracting opportunities for research, development, fullscale engineering or production of major systems. In the case of a requirement to be procured as a small business set-aside, a small disadvantaged business set-aside, or through the 8(a) program, applicable size regulations will apply in determining whether the cooperative venture between a Participant and another business entity qualifies as a small business concern; and

§ 124.304 Statutory exemption from the Walsh-Healey Act.

(a) SBA is authorized to grant Program Participants in the developmental stage of participation a maximum of two exemptions from the requirements of section 1(a) of the Walsh-Healey Act, 41 U.S.C. 35(a). These exemptions apply only to specific 8(a) contracts with anticipated contract values under $10,000,000 (including options) and shall be used only to allow for contingent agreements by a Participant to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. An exemption may be granted only where such exemption is needed to permit the firm to perform a contract which is consistent with the business development goals set forth in its approved business plan and SBA determines that the Participant is fully capable of performing the contract. SBA must be provided with a copy of the intended contingent agreement for its review prior to granting an exemption.

(b) The exemptions described in this section are authorized only until October 1, 1992.

§ 124.305 Statutory exemption from Miller Act bonds.

(a) *Policy.* Subject to the conditions contained in this section, SBA may exempt an 8(a) Participant in the developmental stage of program participation from any payment and performance bonds required by the Miller Act, 40 U.S.C. 270a–270d, for, and in connection with, any 8(a) construction contract whenever it is determined by SBA that the 8(a) concern is unable to obtain the requisite bond(s) from a surety for the performance of the 8(a) contract. The exercise of this authority by SBA is subject to the conditions set forth below.

(b) *Conditions for SBA exemption of bonding requirements.* In order to be eligible to obtain an exemption from the bonds required by the Miller Act, the following requirements must be met:

(1) The Program Participant must have been engaged in construction activities for a period of at least two years;

(2) SBA must find that the concern is otherwise eligible to receive a specific 8(a) construction contract, but is unable to obtain the requisite bond(s) required by the Miller Act for the performance of the contract;

(3) SBA must find, based on information supplied by the Participant, that the Participant cannot secure, either with or without an SBA surety bond guarantee, the bonds required for the contract from a corporate surety; and

(4) SBA must determine that the firm has the potential to become bondable if assisted by the bond waiver.

(c) *Limitations.* (1) The maximum dollar value of an 8(a) contract on which a bond requirement can be exempted is $3,000,000 (including options).

(2) In no event shall the above exemption be construed to make SBA liable to the procuring agency, 8(a) concern or any supplier, subcontractor, laborer or others for contractual obligations entered into by the 8(a) concern under the 8(a) contract to which the exemption applies.

(3) No Participant may receive more than one exemption to the Miller Act at any point in time, unless approved in writing by the Regional Administrator or his/her designee.

(4) No Participant may receive more than a total of five exemptions under this section. Where a Participant receives an exemption for a procurement having a base year and one or more option years, the exercise of an option does not count as an additional exemption (i.e., an exemption on such a contract counts as one exemption, not one for the base year and one for each of the option years exercised).

(5) A bond exemption shall not be granted where a contract for which a Participant has previously received such an exemption has been terminated for default.

(6) In order to be eligible for a bond exemption, a Participant must demonstrate that it has been denied a bond for the performance of the requirement by at least three sureties, at least one of which is a corporate surety.

(d) *Protection of third parties.* (1) The 8(a) contract must contain special clauses indicating that:

(i) The 8(a) contractor will make timely payment to all persons furnishing materials or labor to the 8(a) concern in the performance of the contract;

(ii) There must be established a special bank account in an institution insured by the Federal Deposit Insurance Corporation (FDIC), into which the procuring agency will deposit all payments relating to the performance of the contract; and

(iii) All disbursements from the special bank account shall be subject to the approval and counter signature by SBA or a third party approved by SBA. (This requirement for a controlled account will be satisfied if SBA makes an advance payment to the Participant pursuant to § 124.401 of these regulations and a special bank account is established in connection therewith.)

(2) The 8(a) contractor must notify persons supplying it with materials or labor that the contract is exempt from the Miller Act's bonding requirement and must also notify such suppliers that SBA will not be liable for payment for materials or labor. The 8(a) contractor must obtain a written acknowledgment of such notification from each supplier of materials or labor, and such acknowledgment(s) must, where practicable, be in SBA's possession prior to award of the contract and payment of invoices.

(e) *Procedure for obtaining a bond exemption.* (1) A Program Participant which seeks a bond exemption under this section may submit a written request to the applicable SBA servicing field office.

(2) Upon receipt of the request, SBA shall notify the Participant of supporting documentation that must be submitted in order to process the exemption request.

(3) If SBA preliminarily determines that a bond waiver is appropriate, SBA shall contact the procuring agency, prior to acceptance of the offer, and obtain its written views with respect to the bond exemption.

(4) The views and concerns of the procuring agency will be heavily weighed in determining whether to grant a bond exemption.

(5) If the procuring agency does not concur with the bond exemption and SBA accedes to the procuring agency's concerns, SBA may accept the offer for another 8(a) concern.

(f) *Expiration date.* The exemptions described in this section are authorized only until October 1, 1992.

§ 124.306 Financial assistance for skills training.

(a) SBA may pay in whole or in part the costs of training or upgrading of employees or potential employees of 8(a) concerns. An owner participating in the day-to-day management of a Participant may be considered as an employee for purposes of this section. Payments will be made to training providers pursuant to appropriate agreements.

(b) SBA assistance under this section is subject to the following conditions and requirements:

(1) The concern must be in the developmental stage of program participation.

(2) The 8(a) concern must document that it has explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development and that no such programs are available or are capable of meeting the training needs of the Participant.

(3) The concern must be current with any reporting requirements established by SBA for ongoing program participation.

(4) The employee receiving the training or upgrading may not be a beneficiary of any other publicly or privately funded training program which benefits the trainee or upgraded employee for the same activity SBA is compensating under this section.

(5) The training provider must be an institution of higher education, a community or vocational college, or an institution eligible to provide skills training under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

(6) The training provider may not be debarred or suspended from any Federal programs.

(7) The training of employees or potential employees of a concern must be consistent with the concern's approved business plan.

(8) SBA must approve the training in writing prior to its commencement.

(9) No more than five employees or potential employees of a single 8(a)

concern may be recipients of benefits under this section at one time.

(10) The length of training or skills upgrading financed under this section may be no less than one month nor more than six months.

(11) The training or skills upgrading assistance must be of a type which will offer genuine capacity development for the employing firm.

(12) No more than $2,500 shall be made available for any one employee or potential employee.

(c) SBA's allocation of resources appropriated for the purposes of this section shall generally be based on the identification of needs of developmental stage concerns. SBA shall evaluate training needs in the annual business plan review process, and may conduct other surveys as appropriate.

(d) Projects to be funded under this section shall be initiated by a proposal prepared by the 8(a) concern and submitted to SBA.

(e) Assistance under this section will be made only when the agreements entered into by SBA to fund training or upgrading contain acceptable training and upgrading standards and acceptable monitoring standards and requirements to insure the integrity and effectiveness of the training or upgrading.

(f) The Participant must give adequate assurance that it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed pursuant to this section has been completed. Trainees and upgraded employees must provide a similar assurance that they will remain in the employ of the 8(a) firm for such six-month period. Such assurance will consist of an appropriate written employment agreement. If a trainee or upgraded employee does not remain in the employ of the Participant for at least six months after receiving such SBA-financed training or upgrading, the violating party must reimburse SBA for the amount expended together with any reasonable interest and costs incurred for collection. In addition, the violating party, whether it is the Participant, individual trainee or upgraded employee, shall be barred from receiving any further assistance under this section. The appropriate SBA Regional Administrator, or his/her designee, may waive the reimbursement provisions of this paragraph in limited circumstances where an employee's leaving is due to an unforeseen event (e.g., the employee's spouse is relocated by his/her business and the employee must move).

§ 124.307 Contractual assistance.

(a) It is the policy of SBA to enter into contracts with other Government agencies and to subcontract the performance of such contracts, pursuant to section 8(a)(1)(C) of the Small Business Act, to 8(a) Program Participants at prices which will enable such concerns to perform the contracts and earn a reasonable profit.

(b) Such subcontracts may either be sole source awards or awards attained through competition reserved for eligible Participants.

(c) Admission into the 8(a) program does not bestow a right to receive 8(a) contracts. SBA's approval of a Participant's business plan pursuant to § 124.301 does not guarantee the Participant any particular level of contract support.

(d) An 8(a) contract will be provided to a Participant only when such contract is consistent with the Participant's capabilities and business development needs, as determined by SBA.

§ 124.308 Procedures for obtaining and accepting procurements for the 8(a) program.

(a) *PCR-serviced agencies.* If an SBA Procurement Center Representative (PCR) is resident or has liaison responsibilities in a procuring agency, he/she will be responsible for screening proposed procurements for possible 8(a) contracts, in accordance with 13 CFR 125.6.

(b) *Requirement identification.* A requirement for possible award may be identified by SBA, a particular Program Participant or the procuring agency itself. Once a requirement that appears suitable for the 8(a) program has been identified, SBA shall verify the appropriateness of the SIC code designation assigned to the requirement and request the procuring agency to offer the requirement to the 8(a) program. If SBA disagrees with the SIC code designation assigned to a particular requirement, SBA may request that the procuring agency assign a different SIC code to the requirement. If the requirement exceeds the thresholds established by § 124.311, the SBA will request that the requirement be offered to the 8(a) program to be competed among eligible Program Participants, unless SBA determines that there is not a reasonable expectation that at least two eligible 8(a) concerns will submit offers. If the requirement is below the thresholds established by § 124.311, the SBA may request that it be offered to the 8(a) program for possible sole source award as an open requirement or in support of the approved business plan of a specific Program Participant.

(c) *Offering letter.* When a requirement is offered to the 8(a) program, the offering letter from the procuring activity shall contain the following information:

(1) A description of the work to be performed or items to be delivered and a copy of the statement of work, if available;

(2) The estimated period of performance;

(3) The SIC code that applies to the principal nature of the procurement;

(4) The procuring agency's current dollar estimate of the requirement, including options, if any;

(5) Any special restrictions or geographical limitations on the requirement;

(6) The location of the work to be performed for construction and service procurements;

(7) Any special capabilities or disciplines needed for contract performance;

(8) The type of contract to be awarded, such as firm fixed price, cost reimbursement, or time and materials;

(9) The procurement history, if any, of the requirement;

(10) The names and addresses of any small business contractors which have performed on this specific procurement during the previous 24 months;

(11) A statement that no solicitation for the specific procurement has been issued for small business set-aside or small disadvantaged business set-aside and that no other public communication (such as a notice in the Commerce Business Daily) has been made evidencing the procuring agency's clear intention to set aside the procurement for small business or small disadvantaged business (*see* § 124.309(a));

(12) Identification of any particular 8(a) concern designated for consideration, including a brief justification, such as one of the following:

(i) The 8(a) concern, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) program, or

(ii) The procurement is a follow-on or renewal contract and the nominated concern is the incumbent;

(13) Bonding requirements, if applicable; and

(14) Any other information that the procuring agency deems relevant or SBA requests.

(d) *Acceptance of the requirement.* Upon receipt of the procuring agency's offer, SBA will determine whether it will

accept the requirement for the 8(a) program. SBA's decision whether to accept the requirement will be transmitted to the procuring agency in writing within 15 working days of receipt of the offer, unless SBA requests, and the procuring agency grants, an extension. If SBA decides to accept a sole source requirement for the 8(a) program, it will advise the procuring agency in writing. In the case of a local buy requirement, as defined in § 124.100(o) of these regulations, SBA will accept the offer both on behalf of the program and in support of the business plan of a specific Participant. In the case of a National buy requirement, as defined in § 124.100(q) of these regulations, SBA will accept the offer for the 8(a) program generally and will advise the procuring activity that SBA's appropriate field office will designate a specific Participant for contract performance. If SBA decides to accept a competitive requirement for the 8(a) program, it will send a letter to the procuring agency accepting the offer for the benefit of the 8(a) program generally. SBA is not required to accept any particular procurement for the 8(a) program.

(e) *Sole source award where procuring agency nominates a specific program participant.* If the procuring agency identifies a particular 8(a) concern for a sole source award, SBA will determine whether an appropriate match exists.

(1) Once a procurement is deemed suitable for acceptance as an 8(a) sole source contract, it will normally be accepted on behalf of the Participant recommended by the procuring agency, provided that:

(i) The procurement is consistent with the Participant's business plan;

(ii) The Participant is determined by SBA to be a responsible contractor with respect to performance of the contract; and

(iii) The award of the contract would not result in the Participant exceeding its approved 8(a) business support level or the business mix requirements established under § 124.312.

(2) If an appropriate match exists, SBA will send a letter accepting the offer in support of the business plan of the identified Participant to the procuring agency. This letter will advise the procuring agency whether SBA will participate in contract negotiations or whether SBA will authorize the procuring agency to negotiate directly with the identified Program Participant. A Program Participant selected by SBA to perform a noncompetitive 8(a) contract shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

(3) If SBA determines that an appropriate match with the nominated 8(a) concern does not exist based on the factors set forth in paragraph (e)(1) of this section, it will notify the affected 8(a) concern and may then select an alternate 8(a) concern, in accordance with paragraph (f)(3) of this section. It will so advise the procuring agency of its actions.

(f) *Open requirements.* When a procuring agency does not nominate a particular concern for performance of a sole source 8(a) contract (open requirement), the following additional procedures will apply:

(1) If the contract is a local buy item, SBA will examine the portfolio of 8(a) concerns for the SBA district office where the work is to be performed or the items delivered for selection of a qualified 8(a) concern. If none is found to be qualified or a match for a concern in that district is determined to be impossible or inappropriate, the requirement may be considered for other 8(a) concerns located within the region or, if appropriate, other regions.

(2) If the procurement is a national buy item, it shall be referred to SBA's Central Office in Washington, DC. The Central Office will allocate national buy requirements on an equitable basis.

(3) In cases in which SBA must select a Participant for possible award from among two or more eligible and qualified Participants, the selection will be based upon consideration of relevant factors, including the business development needs, compliance with competitive business mix requirements (if applicable), financial condition, management ability, and technical capability of each Participant. SBA shall make its selection based upon an examination of the business plan and procurement history of the concern as well as any supplemental materials requested and received.

(4) To the maximum extent practicable, the SBA shall promote the equitable geographic distribution of 8(a) sole source contracts.

(g) *Formal technical evaluations.* SBA will not authorize formal technical evaluations for sole source 8(a) contracts. If a procuring agency requires the performance of a formal technical evaluation among more than one 8(a) concern, the procuring agency must request that the requirement be a competitive 8(a) award. The procuring agency may request a formal two-step procurement process pursuant to § 14.5 of the FAR, 48 CFR 14.5, or a standard negotiated competitive procurement. Agencies may, however, conduct informal assessments of several 8(a) firms' capabilities to perform a specific requirement, provided that the statement of work for the requirement is not released to any of the participating 8(a) firms.

§ 124.309 Barriers to acceptance.

SBA will not accept for 8(a) award proposed procurements not previously in the 8(a) program if any of the circumstances identified in paragraph (a), (b), or (c) of this section exist.

(a) *Solicitation previously issued.* A solicitation has already been issued for the procurement as a small business set-aside, such as an Invitation for Bid (IFB) or Request for Proposal (RFP). The AA/MSB&COD may permit the acceptance of the requirement, however, under extraordinary circumstances, such as where a procuring agency had made a decision to offer the requirement to the 8(a) program before the solicitation was sent out and the procuring agency acknowledges and documents that the solicitation was in error.

(b) *Reservation as small business or SDB set-aside.* The procuring agency has expressed publicly a clear intention to reserve the procurement as a small business or small disadvantaged business (SDB) set-aside (*e.g.*, a notice of intent to set aside a procurement published in the Commerce Business Daily which invites a response from interested small businesses). The AA/MSB&COD may permit the acceptance of the requirement, however, under extraordinary circumstances, such as where a procuring agency had made a decision to offer the requirement to the 8(a) program before the notice was sent out and the procuring agency acknowledges and documents that the notice was in error. An annual procurement forecast or solicitation of information for possible small business set aside will generally not be considered as a clear exhibition of intention to set aside a procurement for small businesses.

(c) *Adverse impact.* SBA has made a written determination that acceptance of the procurement for 8(a) award would have an adverse impact on other small business programs or on an individual small business, whether or not the affected small business is in the 8(a) program. The adverse impact concept is designed to protect small business concerns which are performing Government contracts awarded outside the 8(a) program. Adverse impact does not apply to "new" requirements. A new requirement is a requirement which has not been previously procured by the relevant procuring agency. Where a

requirement is new, no small business could have performed the requirement and, thus, an impact determination need not be performed. The expansion or alteration of an existing requirement shall be considered a new requirement where the requirement is materially expanded or modified so that the ensuing requirement is not substantially similar to the prior requirement due to the magnitude of the expansion or alteration.

(1) SBA presumes adverse impact to exist when a small business concern has performed a specific requirement for at least 24 months, it is currently performing the requirement or finished such performance within 30 days of the procuring agency's offer of the requirement for the 8(a) program, and the estimated dollar value of the offered 8(a) award is 25 percent or more of its most recent annual gross sales (including those of its affiliates).

(2) SBA may determine adverse impact to exist upon an adequate showing based on circumstances other than those set forth in the presumption of paragraph (c)(1) of this section.

(d) *Release for non-8(a) competition.* In limited instances, SBA may determine that a sole source 8(a) contract being performed by a Program Participant whose Program Term will expire prior to contract completion or by a former Program Participant whose Program Term has expired within one year may be released to the procuring agency to be completed outside the 8(a) program. If such a determination is made, SBA will reject the procuring agency's offer of the requirement for award through the 8(a) program. In such a case, SBA would recommend that the requirement be procured as a small business set aside or, where appropriate, through a small disadvantaged business competition authorized by Pub. L. 99–661.

(1) In making such a determination, SBA will balance the importance of the contract for the (former) Participant's stability and business development needs against the needs of other Program Participants qualified to perform the requirement in order to develop in accord with their business plan. Such a determination will include consideration of whether the release of the requirement to competition would seriously reduce the pool of similar types of contracts to be fulfilled through the 8(a) program.

(2) A written request for the release of a contract must be made to SBA by the applicable (former) Participant prior to SBA's acceptance of the requirement for the 8(a) program. SBA will not release a requirement absent such a request.

§ 124.310 Approval of lower tier subcontractors.

(a) SBA's approval must be obtained prior to a Participant's subcontracting of the performance of an 8(a) contract to another concern.

(b) SBA will not approve any subcontracting arrangement where:

(1) The performance of work requirements set forth in § 124.314 would not be met;

(2) The proposed subcontractor has been suspended, debarred, or determined to be ineligible by any Federal agency;

(3) SBA determines that the proposed subcontractor would control the performance of the requirement;

(4) SBA determines that the proposed subcontracting relationship is not an arms length agreement; or

(5) SBA determines that the proposed subcontracting arrangement is an attempt to circumvent SBA's size regulations.

§ 124.311 8(a) competition.

(a) *Competitive thresholds.* A contract opportunity offered to the 8(a) program for award shall be awarded on the basis of competition restricted to eligible program participants if:

(1) There is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

(2) The anticipated award price of the contract, including options, will exceed $5,000,000 for contracts assigned manufacturing standard industrial classification (SIC) codes and $3,000,000 for all other contracts.

Example. If the anticipated award price for a professional services requirement is determined to be $2.7 million and it is accepted as a sole source 8(a) requirement on that basis, a sole source award will be valid even if the contract price arrived at after negotiation is $3.1 million.

(b) *Effective date of thresholds.* The thresholds specified in paragraph (a) of this section shall not apply to any 8(a) requirement that has been accepted for the 8(a) program prior to October 1, 1989, where a proposal containing price has been submitted to the procuring agency.

(c) *Exemption from competitive thresholds for 8(a) concerns owned by Indian tribes.* SBA may award an 8(a) subcontract on a non-competitive basis to an 8(a) concern owned and controlled by an economically disadvantaged Indian tribe, as defined in § 124.100(m), even if such contract exceeds the competitive thresholds set forth in paragraph (a) of this section. *See* generally, § 124.112.

(d) *Competition below thresholds.* The AA/MSB&COD may, on a nondelegable basis, approve a request from an agency for a competitive 8(a) award even if the anticipated award price is not expected to exceed the dollar amounts specified in paragraph (a) of this section. Such approvals will be granted on a limited basis.

(1) This authority will be used primarily in areas where technical competitions are appropriate or when a large number of responsible 8(a) contractors exists.

(2) In determining whether to approve a request to compete an 8(a) contract below the applicable threshold amount, the AA/MSB&COD shall consider whether the requesting agency has made and will continue to make available a significant number of its contracts to the 8(a) program on a noncompetitive basis.

(3) The AA/MSB&COD shall deny a request to compete a contract having a dollar figure below the applicable threshold amount where the requirement was previously offered to the 8(a) program on a noncompetitive basis if he/she concludes that the request is based on the inability of the contracting agency and the Participant selected to perform the contract to reach an agreement on price or some other material term or condition.

(e) *Sole source above thresholds.* Where a contract opportunity exceeds the applicable threshold dollar figure and there is not a reasonable expectation that at least two eligible Program Participants will submit offers at a fair price, SBA may accept the requirement for a sole source 8(a) award if SBA determines that an eligible Participant in the 8(a) portfolio is capable of performing the requirement at a fair price.

(f) *Procedures for competition.* (1) Competitions among eligible 8(a) Participants shall be conducted by the procuring agencies in accordance with the Federal Acquisition Regulation (FAR). Such competitions shall be representative of competitions which are the normal practice in the relevant industries. Competitions need not stress price as the dominant factor, but may be based primarily on technical evaluations or other non-price related factors. Competition criteria, whether price or otherwise, must receive prior SBA approval. In any event, selection of a particular Program Participant by the procuring agency shall be based on specific evaluation criteria set forth in the solicitation.

(2) All solicitations for competitive 8(a) requirements shall include the

appropriate SIC code for the requirement.

(3) The procuring agency shall evaluate offers pursuant to the evaluation criteria in the solicitation and the applicable FAR provisions.

(4) In a sealed bid procurement, the procuring agency shall identify the low bidder to SBA. In a negotiated procurement, the procuring agency shall identify all offerors.

(5) The SBA will determine whether any firm identified is eligible for award of the contract, including whether it has the SIC code for the requirement in its approved business plan, whether it is small under the SIC code for the requirement, and whether it has exceeded its approved business support level by more than 25 percent if the firm is in the developmental stage (or will exceed such level if it is awarded the contract at issue) or whether it has achieved its competitive business mix targets under § 124.312 if the firm is in the transitional stage.

(6) If the low bidder in a sealed bid procurement is determined to be ineligible by SBA, the procuring agency shall identify the next low bidder. This process may need to be repeated until SBA determines that an identified Participant is eligible for award.

(7) In a negotiated procurement, the procuring agency will evaluate the offers of those firms determined by SBA to be eligible for award pursuant to paragraph (f)(5) of this section and will conduct discussions and/or negotiations with those firms deemed appropriate.

(8) After negotiations and/or discussions occur in a negotiated procurement, award will be made to the Participant selected by the procuring agency.

(9) Award shall be made through the normal 8(a) award procedures (i.e., a prime contract between the procuring agency and SBA and a subcontract between SBA and the selected 8(a) concern).

(g) *Protest restrictions.* The eligibility of a Participant for a competitive 8(a) award may not be challenged by another Participant or any other party to SBA or to any other administrative forum as part of a bid or other contract protest. Anyone with information concerning the eligibility of a Participant to continue participation in the 8(a) program may submit such information to SBA for in accordance with § 124.111(c).

(h) *Restricted competition.* (1) *Competition within stages of program participation.* SBA may accept a requirement to be awarded through a competition limited to 8(a) concerns in the developmental stage of program participation or limited to concerns in the transitional stage of program participation, or may accept a requirement to be competed among firms both in the developmental and transitional stages of program participation.

(2) *SIC code requirements.* Only those Participants that have in their approved business plan the SIC Code identified in the solicitation may submit offers for the requirement. A Participant will be deemed ineligible for award by SBA if it submits an offer for a requirement for which it does not have an approved SIC Code.

(3) *Local buy competitions.* Where a competitive 8(a) contract opportunity is a local buy requirement, the appropriate Assistant Regional Administrator for Minority Small Business and Capital Ownership Development (ARA/MSB&COD) will determine, based on his/her knowledge of the 8(a) portfolio, whether the competition should be limited only to those program Participants located within the geographical boundaries of one or more district offices or the entire region. Only those Participants located within the appropriate geographical boundaries are eligible to submit offers. If SBA determines, however, that there is not a reasonable expectation that at least two Participants within such region will submit offers, SBA may authorize the procuring agency to accept offers from eligible Program Participants in one or more other specified regions. Without such authorization, Participants located outside the relevant SBA regional boundaries which submit offers shall be considered ineligible. In appropriate instances, a competition may be limited to eligible Program Participants in adjacent SBA district offices which are in different SBA regional offices where the ARA/MSB&COD in the two relevant regions so agree.

(4) *National buy competitions.* Where a competitive 8(a) contract opportunity is a national buy requirement, all eligible Program Participants may submit offers.

§ 124.312 Competitive business mix.

(a) *General.* To ensure that 8(a) firms do not develop an unreasonable reliance on 8(a) contracts and to ease the transition of such firms into the competitive marketplace after exiting the 8(a) program, Program Participants must make maximum efforts to obtain business outside the 8(a) program.

(b) *Non-8(a) business activity targets and support levels during developmental stage*—(1) *Attainment of targeted levels.* During the developmental stage of Program Participation, an 8(a) concern must make substantial and sustained efforts to attain the targeted dollar levels of non-8(a) revenue established in its business plan.

(2) *Maintenance of existing business base.* An on-going business concern which enters the 8(a) program must make maximum efforts to maintain its existing business base and use the 8(a) program as a resource to strengthen the firm after its 8(a) certification.

(3) *Marketing strategy to attain targeted levels.* Every Program Participant must engage in a reasonable marketing strategy that will maximize its potential to achieve the targeted levels of non-8(a) revenue established in its business plan.

(4) *Establishing support levels.* SBA shall establish 8(a) and non-8(a) support levels by considering the firm's sales forecast and supporting data in its business plan, the firm's demonstrated capacity and capability level, current level of non-8(a) contracts on hand and the availability of 8(a) support. The aggregate dollar amount of 8(a) support provided to a Program Participant for any year of program participation during the developmental stage may not exceed the applicable 8(a) support level approved by SBA as reflected in the concern's business plan by more than 25 percent.

(5) *Increasing support levels.* An 8(a) concern in the developmental stage of program participation may request an increase in its approved 8(a) support level once during a program year other than at the date of its annual review. Such request must be made in writing and must be made within 15 calendar days (either before or after) of the six month date of its preceding annual review (e.g., if a firm's annual review occurs on June 23, the firm may request an increase in its approved 8(a) support level between December 8 and January 7—15 calendar days before and after December 23). A revision to a Participant's business plan may not, however, be based solely on the identification of an 8(a) contract in excess of the Program Participant's approved 8(a) support level. A Participant must demonstrate that it has increased its capacity and capability to the point that its currently approved 8(a) support level is inappropriate. The Participant's increased capacity and capability must be greater than the increased level of 8(a) support requested so that the Participant is still able to increase its non-8(a) revenue if the request is approved. Any increase in a Participant's approved 8(a) support level other than as part of the annual review process must be approved in writing by

the appropriate Regional Administrator or his/her designee.

(6) *Measuring 8(a) support.* In determining whether a Participant has reached its 8(a) support level during the program year, the base year value of all contracts awarded during the year shall be added to the value of all options and other modifications which changed the dollar value of the contract executed during that year.

Example: During a specific program year, Program Participant X receives three 8(a) contracts as follows: (1) $1,000,000 contract—$400,000 base year, and two $300,000 options; (2) $500,000 contract—$250,000 base year, and one $250,000 option; and (3) $100,000 contract with no options. In addition, two options on 8(a) contracts awarded in a previous program year, each worth $200,000, are exercised in the program year under consideration. The 8(a) contract support received during that program year is $1,150,000.

(7) *Reporting and verification of business activity.* Once admitted to the 8(a) program, the Program Participant must provide SBA with quarterly and annual financial statements within 90 calendar days (180 calendar days for audited statements) from the end of each quarter. The statements shall report revenue as non-8(a) and 8(a) revenue as appropriate. Also, within 30 calendar days from the end of the program year, the Program Participant shall provide SBA with an annual report of all non-8(a) contracts, options and modifications affecting price executed during the program year.

(c) *Required non-8(a) business activity targets during transitional stage*—(1) *General.* During the transitional stage of the program, the Program Participant shall be required to achieve certain targets of non-8(a) contract revenue. Such targets shall be referred to as non-8(a) business activity targets and shall be expressed as a percentage of total revenue. The targets shall reflect a reasonably consistent increase in non-8(a) revenue. Participants approved for participation on or after November 15, 1988 and Participants with more than five years remaining in the program as of August 15, 1989 shall be subject to the non-8(a) business activity targets set forth in paragraph (c)(4) of this section. Participants with five years or less remaining in the program as of August 15, 1989 shall be subject to the modified non-8(a) business activity targets set forth in paragraph (c)(5) of this section.

(2) *Establishing support levels.* During the transitional stage of the program, SBA shall establish 8(a) and non-8(a) support levels for each Program Participant. The aggregate dollar amount of 8(a) support provided to a Program Participant during the transitional stage may not exceed the established 8(a) support level for the applicable program year. The 8(a) support level shall be established so as to ensure that the 8(a) firm meets the non-8(a) business activity targets or the modified non-8(a) business activity targets set forth in paragraphs (c)(4) and (c)(5) of this section. In establishing the 8(a) support level, SBA will consider the following:

(i) The 8(a) and non-8(a) sales forecast and support data contained in the Program Participant's business plan;

(ii) Current 8(a) and non-8(a) contracts on hand;

(iii) Historical 8(a) and non-8(a) revenue and the current level of 8(a) and non-8(a) revenue;

(iv) The Program Participant's demonstrated capacity and capability level which may include current levels of 8(a) and non-8(a) revenue, current 8(a) and non-8(a) contracts on hand, working capital, access to credit, production capacity, projected increase in non-8(a) revenue, and management and technical capability;

(v) The applicable non-8(a) business activity target for the applicable transitional year.

(3) *Increasing support levels.* An 8(a) concern in the transitional stage of program participation may request an increase in its approved 8(a) support level once during a program year other than at the date of its annual review. Such request must be in writing and must be made within 15 calendar day before or after the six month date of its preceding annual review (e.g., if a firm's annual review occurs on June 23, the firm may request an increase in its approved 8(a) support level between December 8 and January 7—15 calendar days before and after December 23). A revision to a Participant's business plan may not, however, be based solely on the identification of an 8(a) contract in excess of the Program Participant's approved 8(a) support level. A Participant must demonstrate that it has increased its capacity and capability to the point that its currently approved 8(a) support level is inappropriate and that an increase in its approved support level will not conflict with the applicable non-8(a) business activity targets set forth in paragraphs (c)(4) and (c)(5) of this section.

(4) *Non-8(a) business activity targets.* During the transitional stage of program participation, firms approved for program participation on or after the enactment of Pub. L. 100–656 (November 15, 1988) and current Program Participants that have more than five years remaining in the program as of August 15, 1989 shall be subject to the following non-8(a) business activity targets during each year of program participation in the transitional stage:

Program participant's year in the transitional stage	Non-8(a) business activity targets (non-8(a) revenue as a percentage of total revenue)
1	15–25
2	25–35
3	40–45
4	50–55
5	65–75

(5) *Modified non-8(a) business activity targets.* During the transitional stage of program participation, firms that have five years or less remaining in the program as of August 15, 1989 shall be subject to modified non-8(a) business activity targets.

(i) A firm with three to five years remaining in the program as of August 15, 1989 shall be subject to the following non-8(a) business activity targets:

Program participant's year in the transitional stage	Modified non-8(a) business activity targets (non-8(a) revenue as a percentage of total revenue)
1	10–20
2	20–30
3	35–40
4	45–50
5	60–65

(ii) A firm with two years or less remaining in the program as of August 15, 1989 shall make substantial and sustained efforts to attain the targeted dollar levels of non-8(a) sales approved in its business plan.

(6) *Failure to meet required non-8(a) business activity target.* Firms that fail to achieve the minimum percentage non-8(a) business activity target in any year of the transitional stage will be subject to the remedial measures, as set forth in paragraph (c)(12) of this section.

(7) *Attainment of targeted levels.* The Program Participant must make maximum efforts to maintain and increase its targeted level of non 8(a) revenue during the transitional stage.

(8) *Marketing strategy to attain targeted levels.* The Program Participant must engage in a reasonable marketing strategy that will maximize its potential to achieve the targeted levels of non-8(a)

revenue established in the business plan.

(9) *Measuring 8(a) support.* In determining whether a Participant has reached its 8(a) support level during the program year, the base year value of all contracts awarded during the year shall be added to the value of all options and other modifications executed during that year. (*See* Example in paragraph (b)(6) of this section).

(10) *Reporting and verification of business activity.* Program Participants during the transitional stage shall provide SBA with quarterly and annual financial statements with a breakdown of 8(a) and non-8(a) revenue within 90 calendar days (180 calendar days for audited statements) from the close of the reporting period. The Program Participant shall also provide SBA with quarterly and annual reports of all non-8(a) contracts, options and modifications affecting price executed during the program year (and any other information as required by SBA) within thirty days from the end of the reporting period. At the end of each year of participation in the transitional stage, the BOS assigned to work with the Participant shall review the Participant's total revenues to determine whether the Participant's non-8(a) revenues have met the targets established pursuant to paragraphs (c)(4) and (c)(5) of this section.

(11) *Certification of compliance.* Before the receipt of any 8(a) contract during the transitional stage of the program, a Program Participant must certify that it is in compliance with the non-8(a) business activity targets established in its business plan as approved by SBA or that it is in compliance with such remedial measures ordered by SBA if such remedial measures allow the continued award of 8(a) contracts.

(12) *Remedial measures for failure to achieve competitive business activity targets.* SBA is authorized to take appropriate remedial measures with respect to a Program Participant which has failed to attain the minimum required business activity targets as established in paragraphs (c)(4) and (c)(5) of this section. If appropriate, remedial measures will be ordered when a Program Participant fails to achieve the minimum percentage of the non-8(a) business activity target at the end of any transitional year. These remedial actions include, but are not limited to:

(i) Reducing a Participant's approved level of 8(a) support;

(ii) Reducing, or eliminating, sole source 8(a) contracts;

(iii) Restricting the award of any new competitive and/or sole source 8(a) contracts;

(iv) Conditioning the award of future sole source 8(a) contracts on the Participant's taking affirmative steps to expand the dollar volume of its competitive business activity, such as changes in marketing or financing strategies;

(v) Requiring the Program Participant to obtain management and technical assistance or to obtain counseling and/or attend seminars relating to management assistance, business development, financing, marketing, or proposal preparation.

§ 124.313 Certification of SBA's competency.

(a) SBA will certify that it is competent to perform the requirement, as provided by section 8(a)(1)(A) of the Small Business Act, based on its determination that the 8(a) concern with which it intends to subcontract is responsible to perform the requirement. If SBA determines that the concern lacks the capability, competency, capacity, credit, integrity, or tenacity and perseverance to perform on a specific 8(a) subcontract, the subcontract will not be awarded to such concern. A Program Participant which has not submitted required financial statements to SBA will be deemed not responsible to receive 8(a) subcontracts. In addition, SBA will also certify that an 8(a) concern is eligible under the Walsh-Healey Public Contracts Act, 41 U.S.C. 35(a), for each individual 8(a) subcontract.

(b) SBA's determination not to award a Program Participant a specific 8(a) subcontract because the concern lacks an element of responsibility, or is ineligible under the Walsh-Healey Public Contracts Act, does not constitute a denial of total 8(a) program participation for the purposes of section 8(a)(9) of the Small Business Act.

(c) A Participant that is determined by SBA not to be responsible to perform a sole source or competitive 8(a) contract may not seek the issuance of a Certificate of Competency pursuant to § 125.5 of this title.

§ 124.314 Performance of work by the 8(a) concern.

(a) To assure the accomplishment of the purposes of the 8(a) program, each 8(a) subcontractor must perform work equivalent to the following percentages:

(1) *Services (except construction).* In the case of an 8(a) contract for professional and/or non-professional services (except construction), at least 50 percent of the cost of contract performance incurred for labor shall be expended for employees of the 8(a) concern.

(2) *Supplies (other than procurement from a regular dealer in such supplies).* In the case of an 8(a) contract for supplies, an 8(a) concern that seeks to perform the requirement as a manufacturer shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials. This requirement does not apply to 8(a) concerns that seek to perform 8(a) supply contracts as regular dealers in such supplies.

(3) *General construction.* The concern shall perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) *Construction by special trade contractors.* The concern shall perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(b) The Program Participant must certify in its bid or proposal that it will perform the required percentage of work with its own employees. Failure of the concern to provide such a statement will result in the firm being considered ineligible for award.

(c) For purposes of determining whether a Program Participant will perform the required percentage of the contract, the work to be performed by a subsidiary(ies) of the Participant or a concern(s) otherwise affiliated with the Participant is not counted as being performed by the Participant.

(d) *Indefinite quantity contracts.* (1) In order to ensure that the required percentage of an indefinite quantity 8(a) award is performed by the Program Participant, at any point in time the Program Participant must have performed the required percentage of the total value of the contract to that date. For a service or supply contract, this does not mean that the Program Participant must perform 50 percent of each task order with its own work force. But, rather, the Participant is required to perform 50 percent of the combined total of all task orders to date. The Regional Administrator or his/her delegatee may waive this requirement where a large amount of subcontracting is essential in the early stages of performance before the work to be done by the Participant can be performed, provided that there are written assurances from the Participant and the procurring agency that the contract will ultimately comply with the requirements of this section.

Example: If a Program Participant performed 90 percent of a $100,000 task order

on an indefinite quantity service contract with its own work force, it would only have to perform 10 percent of a second task order for $100,000 because the concern would still have performed 50 percent of the combined total value of the contract to date ($100,000 out of $200,000).

(2) Where there is a guaranteed minimum condition in an indefinite quantity 8(a) award, the required performance of work percentage need not be met on the first task order. In such a case, however, the percentage of work to be subcontracted to other concerns by the Program Participant on the first task order may not exceed 50 percent of the total guaranteed minimum dollar value to be provided by the contract. If the first task order exceeds 50 percent of the guaranteed minimum amount, the Participant may subcontract no more than 50 percent of the guaranteed amount. Once the guaranteed minimum amount is met, the general rule for indefinite quantity contracts set forth in paragraph (1) of this section applies.

Example: Where a contract guarantees a minimum of $100,000 in professional services and the first task order is for $60,000 in such services, it would be acceptable for the Program Participant to perform less than $30,000 (i.e., 50 percent of $60,000). The Program Participant could be permitted to perform only $10,000 of that first task order. In such a case, the entire remainder of the guaranteed minimum ($40,000), however, would have to be performed by the Program Participant so that the Participant would have ultimately performed $50,000 (i.e., 50 percent of the guaranteed minimum, i.e. ($100,000).

§ 124.315 Fair market price for 8(a) awards.

(a) A "fair market price" for an 8(a) contract shall be determined by the agency offering the procurement requirement to SBA in accordance with paragraphs (a)(1) and (a)(2) of this section.

(1) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis must also consider any cost or pricing data that is timely submitted by the SBA.

(2) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and material costs, overhead costs, and any other additional costs which may be deemed appropriate.

(b) Upon the request of SBA, an agency offering a procurement requirement for potential award through the 8(a) program shall submit to SBA a written statement detailing the method used by the agency to estimate the current fair market price for such contract. Such statement shall be submitted within 10 business days. The procuring agency must identify the information, studies, analyses, and other data it used in making its estimate. The procuring agency's estimate of fair market price and any supporting data may not be disclosed to any potential contractor or subcontractor, other than SBA.

(c) The concern selected to perform the 8(a) contract may request SBA to protest the procuring agency's estimate of current fair market price to the Secretary of the Department or head of the agency in accordance with § 124.320(b).

§ 124.316 Contract administration.

(a) SBA may delegate, by the use of special clauses in the prime contract and subcontract, certain responsibilities for administering an 8(a) subcontract to the procuring agency.

(b) SBA may delegate to the procuring agency all subcontract administration functions except the following: the exercise of options; the exercise of novation agreements (48 CFR 42.302(a)(25)); the exercise of any modification issued pursuant to the "Changes," "Differing Site Conditions," "Price Reduction," "Default-Damages for Delay-Time Extensions" and "Suspension of Work" clauses (48 CFR Part 43); payments to contractors (48 CFR Part 32); termination of the subcontract (48 CFR Part 49 and § 124.319 of this part); and consent to the placement of subcontracts (48 CFR 42.302(51)).

§ 124.317 Performance of contracts by original concern.

(a) Subject to the provisions of paragraph (b) of this section, a contract (including options) awarded pursuant to section 8(a) of the Small Business Act shall be performed by the concern that initially received such contract. If the owner or owners upon whom eligibility was based relinquishes ownership or control of such concern, or enters into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages shall be assessed against such concern due solely to the provisions of this paragraph. This provision applies whether the concern that initially received 8(a) certification remains a separate legal entity after a transfer of ownership or whether it merges into/with another business concern.

(b) The Administrator may, as a matter of discretion and on a nondelegable basis, waive the requirements of paragraph (a) of this section if requested to do so prior to the actual relinquishment of ownership and control if any of the following conditions exist:

(1) When it is necessary for the owner(s) of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing;

(2) The head of the procuring agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions;

(3) Ownership and control of the concern that is performing the contract will pass to another Program Participant, but only if the acquiring firm would otherwise be eligible to receive the award directly as an 8(a) contract;

(4) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity or death; and

(5) When, in order to raise equity capital, it is necessary for the disadvantaged owner(s) of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

(i) Such concern has exited the 8(a) program;

(ii) The disadvantaged owner(s) will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

(iii) The disadvantaged owner(s) will maintain control of the daily business operations of the concern.

(c) A concern performing an 8(a) contract must notify the SBA in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party. Such an agreement could include an oral agreement to enter into a transaction to transfer interests in the future.

(d) Denial of a waiver request may be appealed to SBA's Office of Hearings

and Appeals in accordance with § 124.210 and Part 134 of the Title.

(e) For the purposes of determining ownership and control of a concern under these regulations, any potential ownership interests (such as options or warrants) held by investment companies licensed under the Small Business Investment Act of 1958 shall not be treated as ownership interests until exercised.

(f) An 8(a) concern may not transfer the performance of an 8(a) contract to another concern. Such a transfer may be grounds for termination of the concern from the 8(a) program.

§ 124.318 Exercise of options and modifications.

(a) *Unpriced options.* The exercise of an unpriced option is considered to be a new contracting action. As such, if a concern has exited the 8(a) program or is no longer small under the size standard corresponding to the SIC Code for the requirement, negotiations to price the option cannot be entered into and the option cannot be exercised. If, however, the concern is still a Program Participant and is still a small business under the size standard corresponding to the SIC Code for the requirement, negotiations to price the option may be entered into and, if a fair and reasonable price is negotiated, the option may be exercised. SBA's concurrence in the exercise of options is required pursuant to § 124.316.

(b) *Priced options.* A priced option to an 8(a) contract award may be exercised whether the concern that received the award has exited the 8(a) program and whether the concern is no longer small under the size standard corresponding to the SIC Code for the requirement.

(c) *Modifications beyond the scope.* A modification beyond the scope of the initial 8(a) contract award is considered to be a new contracting action. As such, if a concern has exited the 8(a) program or is no longer small under the size standard corresponding to the SIC Code for the requirement, the modification cannot be exercised. If, however, the concern is still a Program Participant and is still a small business under the size standard corresponding to the SIC Code for the requirement, the modification may be made since the authority exists to enter into a new 8(a) contract to fulfill the requirement. SBA's concurrence in the exercise of modifications is required pursuant to § 124.316.

(d) *Modifications within the scope.* A modification within the scope of the initial 8(a) contract award may be exercised whether the concern that received the award has exited the 8(a) program and whether the concern is no longer small under the size standard corresponding to the SIC Code for the requirement.

§ 124.319 Contract termination.

(a) *Termination for default.* A decision to terminate a specific 8(a) contract for default is made by the procuring agency contracting officer in cooperation with SBA. The contracting officer will advise SBA in writing in advance of his/her intent to terminate the 8(a) contract for default. SBA may provide to the 8(a) concern any program benefits reasonably available in order to assist in preventing termination for default of the contract. SBA will advise the contracting officer of this effort. If, despite the efforts of the SBA, the procuring agency contracting officer believes grounds for termination continue to exist, he/she may terminate the 8(a) contract for default, after consulting with SBA. Such terminations shall be processed in accordance with the FAR, 48 CFR. SBA will have no liability for termination costs or reprocurement costs.

(b) *Termination for Convenience.* (1) In cooperation with SBA, the procuring agency contracting officer may terminate an 8(a) contract for convenience any time it is determined to be in the best interest of the government to do so.

(2) Pursuant to § 124.317(a) a contract shall be terminated for convenience if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, unless a waiver is granted pursuant to § 124.317. Such terminations shall be processed in accordance with the FAR, 48 CFR.

§ 124.320 Disputes and appeals.

(a) *Contract disputes generally.* (1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, for purposes of the Disputes Clause of a specific 8(a) contract, the contracting officer is that of the procuring agency. A dispute arising between an 8(a) subcontractor and the procuring agency contracting officer will be decided unilaterally by the procuring agency contracting officer. The 8(a) subcontractor has the right to appeal the decision of the procuring agency contracting officer under the Contract Disputes Act of 1978.

(2) For disputes arising out of advance payments or business development expense funds, the contracting officer is that of SBA.

(3) For disputes arising out of construction contracts where SBA has waived bonding pursuant to § 124.305, the contracting officer is that as agreed between SBA and the procuring agency.

(4) Decisions by contracting officers (either of SBA or a procuring agency) may be appealed under the Contract Disputes Act of 1978.

(b) *SBA appeals of nonselection or terms and conditions.* (1) The Administrator of SBA may appeal the following matters to the head of the procuring agency:

(i) The decision not to make a particular procurement requirement available for award under the 8(a) program; or

(ii) The terms and conditions of a particular contract to be awarded under the 8(a) program.

(2) The SBA must notify the contracting officer of the Administrator's intent to appeal an adverse determination within 5 business days of the SBA's receipt of such determination. The SBA Administrator must file a written request to reconsider the adverse decision with the head of the procuring agency (appeal) within 15 business days of the SBA's notification of intent to appeal.

(3) Upon receipt of the notice of intent to appeal, the procuring agency shall suspend further action regarding the procurement until the head of the procuring agency issues a written decision on the appeal, unless the head of the procuring agency makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision.

(4) If the Administrator's appeal is denied, the procuring agency head shall so notify the SBA, specifying the reasons for the denial. This information shall be made a part of the contract file for the requirement.

(c) An 8(a) Participant selected by the SBA to perform or negotiate an 8(a) contract may request the SBA to protest the procuring agency's estimate of the fair market price for such contract pursuant to paragraph (b) of this section.

§ 124.321 Joint venture agreements.

(a) *Prerequisites for joint venture agreement.* An 8(a) concern may enter into a joint venture agreement, as defined in § 124.100(n), with another small business concern, whether or not an 8(a) Participant, for the purpose of performing a specific 8(a) contract. A joint venture agreement is permissible only when the 8(a) concern lacks the necessary capacity to perform the contract on its own, and when the

agreement is fair and equitable and will be of substantial benefit to the 8(a) concern.

(b) *Size limitations.* Except for certain Program Participants owned and controlled by Indian tribes, an 8(a) concern entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) subcontract. As such, the annual receipts or employees of the other concern are included in determining the size of the selected 8(a) concern. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the SIC code industry designated for the contract. *See* paragraph (f)(1) of this section for joint ventures controlled by tribally-owned concerns.

(c) *Contents of joint venture agreements.* The following provisions shall be included in all joint venture agreements:

(1) A provision setting forth the purpose of the joint venture.

(2) A provision designating the parties to the joint venture as co-managers.

(3) A provision stating that not less than 51 percent of the revenues earned by the joint venture shall be distributed to the 8(a) concern.

(4) A provision providing for the establishment and administration of a special bank account in the name of the joint venture. This account shall require the signature of all Participants or designees for withdrawal purposes. All payments due the joint venture for performance on an 8(a) subcontract shall be deposited in the special account from which all expenses incurred under the subcontract shall be paid.

(5) An itemized description of all major equipment, facilities, and other resources to be furnished by each Participant to the joint venture, with a detailed schedule of cost or value of each.

(6) A provision specifying the responsibilities of the parties with regard to contract performance and negotiation of any subcontracts.

(d) *Other requirements.* Joint venture agreements are subject to the following additional requirements:

(1) The joint venture agreement must be approved in advance of contract award by the AA/MSB&COD or his/her designee.

(2) An employee of the 8(a) concern must be the designated project manager responsible for contract performance.

(3) Accounting and other administrative records relating to the joint venture shall be kept in the office of the 8(a) concern, unless approval to keep them elsewhere is granted by the Regional Administrator or his/her designee upon written request.

(4) Quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) shall be submitted to SBA not later than 45 days after each operating quarter.

(5) A project-end profit and loss statement shall be submitted no later than 90 days after completion of the contract including a statement of final profit distribution.

(6) The 8(a) concern shall perform with its own labor force the percentage of the total value of the 8(a) contract set forth in § 124.315.

(e) *Inspection of records.* The SBA shall have the authority to inspect the records of the joint venture without notice at any time deemed necessary.

(f) *Joint ventures with concerns owned by Indian tribes.*—(1) *Exemption from size limitations.* The size limitations set forth in paragraph (b) of this section will not be applied to joint ventures entered into by an 8(a) concern owned and controlled by an economically disadvantaged Indian tribe, as defined in § 124.100(h), if the concern:

(i) Owns and controls 51 percent or more of the joint venture;

(ii) Is located on the reservation of or land owned by the tribe;

(iii) Performs most of its activities on such reservation or tribally owned land; and

(iv) Employs members of such tribe for at least 50 percent of its total workforce.

(2) *Identification of requirements.* Requirements suitable for joint ventures with tribally owned concerns must be identified by SBA and/or the tribally owned concern. Large business concerns may not be involved in identifying such requirements.

(3) *Limitations.* An 8(a) concern as a party to a joint venture may receive the exception set forth in paragraph (f)(1) of this section on no more than two contracts.

(4) *Sunset.* This paragraph shall cease to be effective after September 30, 1991.

§ 124.401 Advance payments.

(a) *General.* (1) Advance payments are disbursements of cash made by SBA to an 8(a) concern prior to the completion of performance of a specific 8(a) subcontract and are based on anticipated performance on the part of the 8(a) concern under a particular 8(a) subcontract. Advance payments are made for the purpose of assisting the 8(a) concern to meet financial requirements pertinent to the performance of an 8(a) subcontract. Advance payments will be considered only after all other forms of financing have been considered by SBA and are determined to be either unavailable or unacceptable to support performance of the 8(a) subcontract.

(2) The gross amount of advance payments will be determined by SBA at the time the request for such payments is approved. In no event shall the total amount of advance payments exceed 90 percent of the outstanding unpaid proceeds of the 8(a) subcontract to which the advance payments relate. In the case of requirements and indefinite quantity type contracts, advance payments will be authorized only when a guaranteed minimum value is established in the 8(a) subcontract, and the advance payments shall not exceed 90 percent of that guaranteed minimum. SBA must approve in writing any subsequent change in the gross amount of advance payments.

(3) All advance payments, whether disbursed by letter of credit or otherwise, and all 8(a) subcontract proceeds shall be deposited into a Special Bank Account established exclusively for that purpose pursuant to the Advance Payment clause of the 8(a) subcontract. Under no circumstances may advance payment funds be deposited in certificates of deposit or other securities. The procuring agency shall pay all 8(a) subcontract proceeds directly into the Special Bank Account until notified by SBA in writing that the advance payments have been fully liquidated. SBA will not authorize any withdrawals from the Special Bank Account that are inconsistent with the liquidation schedule established by the 8(a) subcontract under which the advance payments were made.

(4) Advance payments shall be liquidated from proceeds derived from the performance of the specific 8(a) subcontract to which they pertain or from other revenues of the business (except other advance payments). 8(a) subcontract proceeds shall be applied first to liquidate outstanding advance payments. Repayment must occur according to the liquidation schedule established by the 8(a) subcontract under which the advance payments were made.

(5) The special bank account may not be used as a revolving line of credit. The cumulative total amount of advance payments disbursed may not exceed the amount authorized by the Regional Administrator or his/her designee.

(b) *Requirements and conditions.* (1) Advance payments may be approved for an 8(a) concern only when all of the

following conditions are found by SBA to exist:

(i) An 8(a) concern does not have adequate working capital to perform a specific 8(a) subcontract.

(ii) Adequate and timely private financing is not available on reasonable terms to provide necessary capital.

(iii) Progress payments based on costs at customary rates will not satisfy the working capital requirements of the 8(a) concern to perform the 8(a) subcontract.

(iv) When applicable, loan guarantees for defense production are not available.

(v) Progress payments based on costs with unusual terms will not satisfy the working capital requirements of the 8(a) concern to perform the 8(a) subcontract.

(vi) The 8(a) concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of advance payment funds. These records must be made available upon request for review and copying by SBA and other appropriate Federal officials.

(vii) The 8(a) concern has no unliquidated advance payments outstanding on another 8(a) subcontract which is completed, terminated or in default, unless such unliquidated advance payments are due only to the contracting agency's delay in making final payment to the 8(a) concern after it has successfully completed the 8(a) subcontract.

(2) Advance payments shall not be made to an 8(a) concern in any case in which the concern has assigned its right to receive any payment under the specific 8(a) subcontract to any person or entity.

(3) SBA shall not charge interest on advance payments disbursed pursuant to these regulations, except that SBA may charge interest if the 8(a) concern is declared to be in default either with respect to performance or liquidation of the advance payments. In such event, interest will accrue from the date of default and shall be assessed at such rate as established by the Secretary of the Treasury pursuant to Pub. L. 92–41.

(4) Under no circumstances may a liquidation schedule be waived; however, the cognizant Regional Administrator or his/her designee may extend a liquidation schedule in appropriate cases.

(c) *Application and approval procedure.* The following procedures apply to the approval of advance payments:

(1) The 8(a) concern must submit a written request for advance payments to the cognizant SBA Regional Administrator or his/her designee. Such request must include such detailed documentation as SBA may specify to support the 8(a) concern's need for such funds and proof that working capital financing cannot be found from financing institutions at reasonable terms.

(2) The 8(a) concern must identify a commercial bank which is a member of the Federal Reserve System in which it will establish a Special Bank Account for the deposit of advance payments and all progress payments made to it by the procuring agency for its performance of the 8(a) subcontract. This special account shall be a non-interest bearing demand deposit account.

(3) The 8(a) concern must, as required by IRS regulations, select a Federal Depository into which the Federal withholding and FICA payment will be made.

(4) Upon review of all of the circumstances, the Regional Administrator or his/her designee shall decide whether to approve or deny a request for advance payments, and, if approval is granted, shall designate the amount thereof and the terms and conditions upon which such advance payments may be made. The Regional Administrator's or his/her designee's Finding, Determination and Authorization for Advance Payments shall be in writing, and shall, at a minimum, state that the 8(a) concern has given adequate security, that the advance payments will not exceed the unpaid contract price, and, based on written findings, that making the advance payments either is in the public interest or facilitates the national defense. The Finding, Determination and Authorization for Advance Payments shall identify what security shall be required, including but not limited to a lien against the property contracted for, the balance of the Special Bank Account, and any property acquired for the performance of the 8(a) subcontract.

(d) *Post-approval procedures.* The Contracting Officer shall be responsible for assuring that advance payments are implemented consistent with the Finding, Determination and Authorization for Advance Payments issued by the Regional Administrator or his/her designee. Before any advance payments are disbursed, the following actions must occur:

(1) The 8(a) concern must execute a note evidencing the full amount of the advance payments and a security agreement and personal guarantee by one or more of the principals of the 8(a) concern as collateral for the advance payments.

(2)(i) The 8(a) concern and the SBA shall execute a modification to the 8(a) subcontract adding an Advance Payment clause prior to the disbursement of any advance payments. The clause shall state the amount of the advance payments, a liquidation schedule and all other terms and conditions to govern the advance payments, consistent with the Finding, Determination and Authorization for Advance Payments issued by the Regional Administrator or his/her designee.

(ii) The Contracting Officer, when other contract terms reducing the quantity, price or term of performance of the 8(a) prime contract and subcontract are modified by the procuring agency, shall initiate action to modify the Advance Payment clause and, if appropriate, the letter of credit as necessary, including, but not limited to, reduction of the total amount of advance payments authorized or the amount of the letter of credit and/or restructuring the liquidation schedule, to ensure that at no time during the performance of the 8(a) subcontract does the unliquidated advance payments balance exceed 90 percent of the unpaid value of the 8(a) subcontract.

(3) The 8(a) concern, SBA and the bank in which the Special Bank Account has been established will enter into a Special Bank Account Agreement prior to disbursement of any funds, which agreement shall specify the respective rights and responsibilities of the parties. The Agreement shall grant to SBA the unilateral right to withdraw any funds in the Special Bank Account to the extent necessary to liquidate any unliquidated advance payments.

(i) The cognizant SBA Regional Administrator shall designate at least two SBA employees to serve as countersignatories on the Special Bank Account. Withdrawals from the account will be made only upon the authorized signatures of a representative of the 8(a) concern and one of the designated SBA employees, as identified on the signature card for the Special Bank Account. Under no circumstances shall the requirement for an SBA employee countersignature be waived.

(ii) At the time that SBA disburses advance payment funds into the Special Bank Account, SBA shall obtain the most superior lien possible upon the Special Bank Account, any property contracted for, supplies, material and other property acquired with the advance payment funds, and upon any other security required by the Finding, Determination and Authorization for Advance Payments.

(4) Prior to the disbursement of an advance payment, SBA shall modify the

prime contract with the procuring agency in the following respects:

(i) Reassign contract administration authority to the extent necessary to administer the Advance Payment clause of the 8(a) subcontract to SBA's Contracting Officer.

(ii) Direct payment of all contract proceeds into the Special Bank Account until SBA issues written notice that the advance payments have been fully liquidated.

(iii) Require prompt notice of any adverse developments in contract performance, changes in the Government requirement, or of any other condition that may affect progress payments.

(iv) Require that copies of all payment vouchers issued by the procuring agency's disbursing office be sent to the Contracting Officer.

(e) *Procedures for use of advance payment funds.* (1) Except for repayment to SBA in appropriate circumstances, advance payment funds may be used by an 8(a) concern only for the purchase of materials, payment of labor, payment for equipment expenses, general and administrative expenses and overhead, and payment of progress payments to the subcontractors of the 8(a) concern necessary for the performance of the specific 8(a) subcontract for which the advance payments were authorized. 8(a) concerns shall follow a two-step process to gain access to advance payment funds. The first step is the disbursement of the advance payment funds from SBA, either directly or by way of letter of credit into the Special Bank Account. The second step is the withdrawal of funds from the Special Bank Account by check to pay particular contract expenses.

(2) *Disbursement of advance payment funds by SBA.* (i) SBA shall disburse advance payments by way of a letter of credit where the Agency anticipates that all of the following conditions exist:

(A) Its relationship with the particular 8(a) concern will last for a year or more.

(B) The cumulative disbursements to that 8(a) concern will total at least $120,000 annually.

(C) The 8(a) concern has submitted a schedule of its projected monthly advance requirements for 8(a) subcontract disbursements and SBA has reviewed it and found it to be reasonable.

(D) The 8(a) concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of program funds. These records must be made available upon request for review and audit by SBA and the General Accounting Office.

(ii) *Procedures for disbursements by letter of credit.* The procedures for the utilization of the letter of credit method of payment shall be in accordance with 48 CFR 32.406. Where disbursement is by the letter of credit method, an 8(a) concern shall draw down funds against its letter of credit for deposit into the Special Bank Account only as needed and in such amounts necessary for its immediate cash needs under the 8(a) subcontract for which the advance payments were authorized. Such immediate cash needs shall be documented by the 8(a) concern and verified by SBA prior to drawdown. The amount of each drawdown against the letter of credit shall be for the minimum amount needed to satisfy immediate cash needs, taking into account other financial resources available to the 8(a) concern, including progress payments not required for the liquidation of disbursed advance payments.

(iii) In all instances not covered by paragraph (e)(2)(i) of this section, SBA shall disburse advance payments by Treasury check or electronic funds transfer. In such cases, the Contracting Officer shall request SBA's Office of Financial Operations, Denver, Colorado, to disburse the authorized amount of the advance payments into the Special Bank Account.

(3) *Procedures for withdrawal of funds from the Special Bank Account.* All payments to the 8(a) concern under the 8(a) subcontract for which advance payments were authorized, together with all disbursements of such advance payments, shall be paid into the Special Bank Account.

(i) *Liquidation of disbursed advance payments.* The funds in the Special Bank Account shall be applied by SBA first to liquidate the balance of disbursed advance payments, in accordance with the liquidation schedule in the Advance Payment clause of the 8(a) subcontract. Withdrawals for liquidation of disbursed advance payments shall be made in accordance with the procedures contained in the Advance Payment clause of the 8(a) subcontract.

(ii) *Payment of 8(a) subcontract expenses.* Any amounts in the Special Bank Account not required to liquidate disbursed advance payments shall next be applied to pay allowable and allocable costs incurred in the performance of the 8(a) subcontract for which the advance payments were authorized. To obtain withdrawals from the Special Bank Account for the payment of such costs, the 8(a) concern shall request issuance of checks for the payment of expenses to the Contracting Officer, supported by the documentation described below. Such requests shall be made sufficiently in advance of the due date for such obligations to permit the review of the request by SBA and countersignature by the designated SBA countersignatories. The Contracting Officer or his/her designee will review the documentation presented and either recommend approval or disapproval to the Assistant Regional Administrator for Minority Small Business and Capital Ownership Development (ARA/MSB&COD). If the ARA/MSB&COD authorizes payment, the designated SBA countersigning agent(s) will countersign the check withdrawing funds from the Special Bank Account. The 8(a) concern shall support each request for a withdrawal from the Special Bank Account by submitting to the Contracting Officer or his/her designee, to the extent applicable, the following:

(A) The original vendor invoice or original payroll record;

(B) A certified statement, dated and signed by the concern's authorized certifying official, attesting to the truth and accuracy of the vendor invoice, and/or the payroll records for the requested withdrawal, including records of direct payroll expenditures as well as labor overhead;

(C) A certification by the 8(a) concern that all Federal taxes and FICA payments are current, or a copy of any agreement with the Internal Revenue Service (IRS) providing for payment of delinquent taxes; and

(D) Documentation of overhead and general and administrative rates, using projected indirect costs applied to a valid base, which have been properly allocated to direct material, labor, or other direct costs.

(E) Where the requested withdrawal is for payroll expenses, the 8(a) concern must prepare a check for Federal taxes in the name of the tax collecting agency, or the Federal Depository selected by the 8(a) concern into which its Federal withholding and FICA payments are made, to be signed by SBA and the 8(a) concern concurrent with the check for the submitted payroll. If the amount of a check payable to IRS or to the Federal Depository is less than 25 percent of the gross payroll for the Period, the 8(a) concern's authorized certifying official shall prepare a statement certifying that the amount designated as payable to IRS or to the Federal Depository is true and correct. There shall be no change of Federal Depository without obtaining the prior written consent of SBA.

(iii) *Release of residual funds after liquidation of the advance payments and payment of 8(a) subcontract expenses.* Any funds remaining in the Special Bank Account after the 8(a)

subcontract has been successfully completed or terminated and after the advance payments have been fully liquidated and all allowable and allocable 8(a) subcontract performance costs have been paid shall be disbursed to the 8(a) concern. Upon receipt of the final progress payment, the Contracting Officer shall expeditiously close the Special Bank Account, executing a check withdrawing the remaining balance of the Account payable to the 8(a) concern.

(f) *Cancellation.* (1) SBA may determine that advance payments should be cancelled under appropriate circumstances, including but not limited to the following:

(i) The terms and conditions of the Advance Payment clause have not been adhered to by an 8(a) concern.

(ii) The 8(a) concern is not in compliance with its 8(a) Participation Agreement.

(iii) The 8(a) concern has been suspended pursuant to § 124.115 or has been terminated by administrative action under section 8(a)(9) of the Small Business Act, 15 U.S.C. 637(a)(9).

(2) In the event of cancellation of advance payments to an 8(a) concern, all previous advance payments made to that 8(a) concern shall become due and payable to SBA prior to the receipt of final contract payment.

§ 124.402 Business development expense.

(a) Any Business Development Expense (BDE) funds received by a Program Participant prior to October 1, 1989 must. be used exclusively for the purposes stated in the BDE approval. Use of such funds for any other purpose may be good cause for termination from the 8(a) program pursuant to § 124.209.

(b) Any Program Participant which received BDE funds prior to October 1, 1989 shall maintain records to substantiate the uses for which the BDE funds have been expended.

(c) In the event of default on an 8(a) contract to which BDE funds relate, the Participant shall be liable for repayment of the full amount of the BDE to SBA.

§ 124.501 Development assistance program.

(a) *General.* Section 7(j)(1) of the Small Business Act provides for financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(a)(11), 7(j)(10), and 8(a) of the Small Business Act. The AA/MSB–COD is responsible for coordinating and formulating policies relating to the dissemination of this assistance to small business concerns eligible for assistance under sections 7(a)(11), 7(j)(10) and 8(a) of the Small Business Act.

(b) *Services.* (1) Section 7(j)(1–2) of the Small Business Act empowers the SBA to provide through public and private organizations the management and technical assistance enumerated below to those individuals or concerns who meet the eligibility criteria contained in sections 7(a)(1) and 8(a) of the Small Business Act.

(2) The SBA shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to participate in the section 8(a) program.

(3) This assistance may include any or all of the following:

(i) Planning and research, including feasibility studies and market research;

(ii) The identification and development of new business opportunities;

(iii) The furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections 7(a)(11), 7(j)(10) and 8(a) of the Small Business Act;

(iv) The establishment and strengthening of business service agencies, including trade associations and cooperatives;

(v) The furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(4) Sections 7(j)(3) and 7(j)(9) of the Small Business Act authorize SBA to:

(i) Encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. SBA may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections 7(a)(11), 7(j), and 8(a) of the Small Business Act, and

(ii) Coordinate and cooperate with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such a way as to further the purposes of sections 7(a)(11), 7(j), and 8(a) of the Small Business Act.

(c) *Eligibility.* (1) Eligibility for the assistance enumerated under § 124.501(b) above shall include, but not be limited to:

(i) Businesses which qualify as small within the meaning of size standards prescribed in 13 CFR Part 121, and which are located in urban or rural areas with a high proportion of unemployed or low-income individuals, or which are owned by such low-income individuals; and

(ii) Businesses eligible to receive contracts pursuant to section 8(a) of the Small Business Act.

(d) *Delivery of services.* (1) The financial assistance authorized for projects under paragraph (b) of this section includes assistance advanced by grant, cooperative agreement, or contract.

(2) To the extent feasible, services available under paragraph (b) of this section shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(e) *Coordination and cooperation with other government agencies.* (1) The AA/MSB–COD may utilize the resources of other agencies and departments whenever practicable which can directly or indirectly support or augment the purposes of sections 7(a)(11), 7(j) and 8(a) of the Small Business Act.

(2) The AA/MSB–COD shall enter into agreements with Federal agencies and departments to further effective sections 7(a)(11), 7(j) and 8(a) of the Small Business Act.

(3) The AA/MSB–COD shall encourage the placement of deposits made by the Federal Government, or by programs aided with Federal funds, in such a way as to further the purposes of section 7(a)(11), 7(j) and 8(a) of the Small Business Act.

§ 124.502 Small Business and Capital Ownership Development program.

(a) *General.* Section 7(j)(10) of the Small Business Act establishes a Small Business and Capital Ownership Development program which shall provide additional assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act. The management of the Capital

Ownership Development program is vested in the AA/MSB–COD who is responsible for the oversight of the program and activities set forth in this part of these regulations. The development assistance described below shall be provided exclusively to those small business concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act. Such small business concerns shall be participants in the Small Business Capital Ownership Development program. This program shall:

(1) Assist small business concerns participating in the program to develop comprehensive business plans with specific business targets, objects, and goals;

(2) Provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the program, including but not limited to:

(i) Loan packaging,

(ii) Financial counseling,

(iii) Accounting and bookkeeping assistance,

(iv) Marketing assistance, and

(v) Management assistance;

(3) Assist small business concerns participating in the program to obtain equity and debt financing;

(4) Establish regular performance monitoring and reporting systems for small business concerns participating in the program to assure compliance with their business plans;

(5) Analyze and report the causes of success and failure of small business concerns participating in the program; and

(6) Provide assistance necessary to help small business concerns participating in the program to procure surety bonds. Such assistance shall include, but not be limited to:

(i) The preparation of surety bond participation forms;

(ii) Special management and technical assistance designed to meet the specific needs of small business concerns participating in the program and which have received or are applying to receive a surety bond, and

(iii) Preparation of all forms necessary to receive a surety bond guarantee from the SBA pursuant to Title IV, Part B of the Small Business Investment Act of 1958.

§ 124.601 Miscellaneous reporting requirements.

(a) *Capability statements.* Each 8(a) concern shall annually prepare and submit to the SBA a capability statement. Such statement shall briefly describe the concerns various contract performance capabilities and shall contain the name and telephone number of the BOS assigned the concern. SBA will submit the capability statements to the appropriate procuring agencies for the purpose of matching requirements with appropriate 8(a) concerns.

(b) *Participant reports on parties assisting it and fees.* (1) Each 8(a) Program Participant shall submit semi-annually a written report to its assigned BOS to include the following information:

(i) A listing of any agents, representatives, attorneys, accountants, consultants and other parties (other than employees) receiving fees, commissions, or compensation of any kind to assist such Participant in obtaining a Federal contract;

(ii) The amount of compensation received by any person listed under paragraph (b)(1)(i) of this section during the relevant reporting period along with a description of the activities performed for such compensation.

(2) The BOS will review the report and forward it to the AA/MSB&COD. Any report that raises a suspicion of improper activity shall be referred immediately to the SBA Inspector General.

(3) The failure to submit a report pursuant to the requirements of this section shall be considered good cause for the initiation of a termination proceeding pursuant to § 124.209.

(c) *Reporting requirements after exiting the 8(a) program.* Former 8(a) Program Participants shall provide such information as SBA may request concerning such former Participant's continued business operations, contract portfolio and financial condition for a period of three years following the date on which the concern exits the program. Failure to provide such information when requested may result in the nonexercise of options on contracts awarded through the 8(a) program.

Date: March 19, 1989.

James Abdnor,

Administrator.

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March 23, 1989

Part III

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing eligibility, entitlement, and payment determinations under section 3(d)(2)(B) of the Impact Aid program. Changes in a number of other regulatory provisions relating to payments under sections 2, 3, and 4 of this program also are proposed. These regulations would provide guidance to local educational agencies (LEAs) applying for maintenance and operations assistance under Pub. L. 81–874 (the Act), and may affect the Department's calculation of assistance amounts.

DATE: All comments must be received on or before June 21, 1989.

ADDRESS: Comments should be addressed to Charles E. Hansen, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW., Room 2079, Washington, DC 20202–6272.

FOR FURTHER INFORMATION CONTACT: Charles E. Hansen, telephone: (202) 732–3637.

SUPPLEMENTARY INFORMATION:

A. General

Pub. L. 81–874, as amended, 20 U.S.C. 236 through 241–1 and 242 through 244, known as the Impact Aid maintenance and operations assistance program, authorizes assistance to LEAs that are financially burdened by a reduced tax base resulting from the Federal acquisition of real property, an increased student population due to Federal activities, or both. Section 3 of the Act addresses both types of burdens by authorizing payments to LEAs that are required to provide free public education to children who live on, and/or whose parents are employed on, tax-exempt, federally owned or leased real property ("federally connected children"). These payments supplement local revenues and assist the LEAs in meeting their maintenance and operations costs.

Section 3(d)(2)(B) of the Act, 20 U.S.C. 238(d)(2)(B), provides financial assistance, in addition to regular payments under section 3 of the Act, to certain heavily impacted LEAs that demonstrate eligibility for that assistance. For an applicant eligible to receive assistance under section 3(d)(2)(B), the statute provides that the Secretary will supplement the eligible LEA's section 3 payment to enable it to provide a level of education equivalent to that provided by the school districts determined to be generally comparable to it. A payment provided under section 3(d)(2)(B), however, is subject to a maximum entitlement amount.

In order to inform applicants about the operation of section 3(d)(2)(B) of the Act, the Secretary believes it is desirable to describe in regulations how the Department determines eligibility, entitlements, and payments for all LEAs applying for section 3(d)(2)(B) assistance. In addition to proposed Subpart K, which relates specifically to section 3(d)(2)(B), a number of existing regulatory provisions are proposed to be amended. Also, Subpart H, containing provisions related to handicapped children and children with specific learning disabilities, is revised to clarify language and specify requirements for fiscal accountability for the use of section 3(d)(2)(C) funds.

These proposed regulations are based upon the requirements in the Act as revised by the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297, April 28, 1988) (hereinafter "the Hawkins-Stafford Amendments"). Unless otherwise indicated, the provisions in these proposed regulations reflect the current policy and practice of the Department. With the exception of application filing requirements, the Department anticipates that payments made for fiscal year (FY) 1989 and following fiscal years will be governed by these regulations when published in final form. The proposed changes in the application filing requirements are expected to become effective starting with FY 1990.

B. Proposed Amendments to §222.3 (General Definitions)

Applicant. The current definition of the term "applicant" is revised. A reference to arrangements under section 6 is removed because funds for that purpose have been appropriated to the Department of Defense since FY 1982 and because the Hawkins-Stafford Amendments allow school districts to receive funds under both sections 3 and 6. Language is added to the definition to clarify that a State educational agency (SEA) may be an applicant only when it directly operates school facilities. This is a change from current practice. An SEA has been treated as an eligible applicant if it makes tuition payments to school districts that actually provide educational services to the children the SEA claims in its application. The Department believes the proposed change in this definition reflects more closely the language of the statute and the intent of the Congress. The authority citation is revised by adding 20 U.S.C. 244(6), which is the basis for the provision relating to SEAs.

Application. The current definition of the term "application" is simplified and clarified.

Federally connected children. A definition of the term "federally connected children" is added. This term is in common usage but has never been specifically defined in regulations. The proposed definition is the same as that currently in use and is added simply for the convenience of applicants.

Local educational agency. A definition of the term "local educational agency" is added. This definition describes the necessary characteristics of an LEA and the specific conditions under which an SEA is considered to be an LEA. This definition clarifies the language of the statute with respect to SEAs, consistent with the revised definition of the term "applicant."

Membership. A definition of the term "membership" is added. This term is used throughout the program regulations but has not previously been specifically defined. Conditions under which membership can and cannot be counted for section 3 payment purposes are listed.

Parent employed on Federal property. A definition of the statutory term "parent employed on Federal property" is added to replace the term "working on Federal property," which is not used in the statute and is therefore proposed for deletion by these regulations. One obsolete provision in the current definition of "working on Federal property," however, is not incorporated. The definition is clarified to indicate that, except for persons employed on commingled Federal and non-Federal property, parents who are not Federal employees but who spend more than half of their working time on Federal property are not considered "parents employed on Federal property" unless they report to work on the Federal property. For example, a person who spends most of the day making deliveries on a military base would not qualify if he reports to work off base. Real property taxes would be paid on the reporting place and thus, although most of the work day is spent on Federal property, taxes on the place of

employment are not lost to the school district. The addition of this definition helps to clarify the Department's policies and ensures more uniform implementation of the statute.

Uniformed services. The current definition of the term "uniformed services" is revised to change the "Environmental Science Services Administration," to the "National Oceanic and Atmospheric Administration" which is the current title of that organization. The authority citation is also revised to correct the currently incorrect citations.

Working on Federal property. The definition of "working on Federal property" is removed. This definition is replaced by the new definition of "parent employed on Federal property," which is the statutory term.

C. Proposed Amendment to § 222.10 (Application Filing Requirements)

This proposed amendment revises § 222.10, effective beginning with FY 1990, to require all applications to be submitted by January 31, to specify that a copy of an application must be submitted by the LEA to its SEA by January 31 and that the SEA must notify the Secretary by February 15 if it has concerns with an LEA's application, to specify that when an SEA has concerns with an application, payments will not be processed until the concerns are resolved, to clarify what is meant by timely receipt of an application, and to delete an obsolete provision. These are all changes from current policy. These revisions are intended to remove the requirement that an SEA must actually sign an LEA's application and transmit it to the Department to indicate its approval of the application. The current application procedures allow applications to be submitted by January 31 *without* SEA certification so long as copies *with* SEA certification are submitted by February 15. These revisions are also intended to clarify the current application procedures under which an application will be accepted after the filing date only if it bears a U.S. Postal Service postmark dated on or before the filing date. LEAs should note that these application filing procedures will only be prospectively applied from FY 1990.

Paragraph (c)(2) of § 222.10 is also revised to clarify that if an LEA becomes eligible during a fiscal year, it must file an application no later than the end of the Federal fiscal year, i.e., September 30 and, at the same time, transmit a copy of that application to its SEA. (The end of the *Federal* fiscal year may differ from the end of the LEA's fiscal year.)

D. Proposed Amendment to § 222.22 (Calculation of ADA for an LEA's Federally Connected Children for Purposes of Computing Entitlements and Payments Under Section 3)

The proposed amendment incorporates procedures that the Secretary will accept for determining the ADA of an LEA's federally connected children. Procedures for States that do not collect ADA data are added to the current regulatory procedures for States that do collect ADA data. Under the proposed amendment, LEAs in States that do not collect ADA data may base the ADA of federally connected children on an average of ADA data that were formerly collected by the State, on samplings of ADA data collected by LEAs during the prior fiscal year, or on data similar to attendance data if requested by the SEA and approved by the Secretary. The amendment also describes what is meant by actual ADA data and what attendance data the Secretary disallows.

E. Proposed Amendment to § 222.32 (Local Contribution Rate Guaranteed by the Act)

The proposed amendment adds a new paragraph (c) to this section. This paragraph explains how the Department will implement a provision in the Hawkins-Stafford Amendments that guarantees a special minimum local contribution rate for certain school districts whose boundaries are coterminous with the boundaries of a military installation. Coterminous school districts generally have no taxable real property and raise little or no revenue from local sources for school purposes. Thus, they are heavily dependent on State aid and Impact Aid for funds to support their school systems.

The proposed amendment is a change from past practice and, as mandated by the Hawkins-Stafford Amendments, became effective beginning with payments of fiscal year 1988 funds. In the past, any applicant could choose to base its local contribution rate on the higher of the national or State average per pupil expenditure or on the average per pupil expenditure of generally comparable LEAs in the applicant's State. The Hawkins-Stafford amendment to section 3(h) of the Act specifies that a coterminous LEA's local contribution rate shall be at least 70 percent of the national average per pupil expenditure for the second preceding fiscal year if certain conditions are met. This would be a 40 percent increase over the current minimum local contribution rate based on the national average per pupil expenditure.

The new statutory provision states that a coterminous LEA cannot receive this new rate if its State aid law would not allow it to keep the additional Impact Aid funds the rate would provide for the LEA or if its State aid payment would be reduced as the result of a higher Impact Aid payment. Under the proposed regulation, a coterminous LEA also could not receive this new rate if the resulting payment would increase its per pupil expenditure for the second preceding fiscal year to more than the average per pupil expenditure for its State for the second preceding fiscal year.

However, even a district that could keep an increased payment and not have its State aid reduced, would still not necessarily receive a rate of 70 percent of the national average per pupil expenditure. This would be the case if the LEA's per pupil expenditure for the second preceding fiscal year would *exceed* its State's average for the second preceding year if its payment were based on a rate of 70 percent of the national average per pupil expenditure. Instead, the LEA would receive a payment based on the rate of less than 70 percent of the national average that would allow its expenditures to increase *to* the average of its State.

F. Proposed Amendment to § 222.36 (Determination of Additional Assistance)

This proposed amendment revises § 222.36 to incorporate a provision of the Hawkins-Stafford Amendments that affects the determination of generally comparable LEAs for the purposes of eligibility and payment under section 3(d)(2)(B). The Hawkins-Stafford Amendments make a change to section 3(d)(2)(B) to allow an LEA applying for additional funds under that section to use three school districts in its State to determine its eligibility for such a payment and the amount of that payment. The apparent intention of this provision is to use for these purposes the districts in the State that are the most comparable to the applicant. The proposed amendment is a change from current practice, under which data from at least 10 LEAs are required to determine a local contribution rate that is based on generally comparable LEAs.

The amendment to the Act does not specify how the three comparable LEAs are to be identified. The method contained in these proposed regulations for identifying those districts is based on current regulations for identifying generally comparable LEAs for any applicant. The current regulations specify certain basic objective factors

related to educational costs that must be used to identify comparable LEAs for the purpose of establishing local contribution rates. These include grade span, legal classification if appropriate, size, and location. The proposed regulations require that all these factors be used first to arrive at the smallest possible group of similar LEAs in the State. The LEA may then choose three of the LEAs closest to it in size on which to base its section 3(d)(2)(B) eligibility and payment. These could be the next three larger, the next three smaller, the next two larger and next one smaller, or the next one larger and the next two smaller. The Secretary will then use the procedures specified in these proposed regulations to determine whether the applicant is eligible for additional funds under section 3(d)(2)(B) and, if so, the amount of those funds.

G. Proposed Amendment to § 222.37 (Determination of Compensation for Unusual Geographical Factors)

The amendment proposed specifies that the Secretary uses the criteria in proposed §§ 222.124 through 222.129 to determine whether an applicant under section 3(d)(3)(B)(ii) is making a reasonable tax effort. These are the same reasonable tax effort requirements that are applicable to section 3(d)(2)(B) applicants. Because sections 3(d)(2)(B) and 3(d)(3)(B)(ii) have similar purposes, the same procedures will apply to applicants under both sections.

H. Proposed Amendment to § 222.42 (Adjustment for or Recovery of Overpayment)

The proposed amendment incorporates in § 222.42 a description of the Secretary's authority to recover Impact Aid overpayments from payments made under other programs of the Department or programs of other Federal agencies. The Department has common-law authority to offset Impact Aid overpayments against other programs and agencies. In 1986, the Department published final regulations describing, in general, Department offset procedures. (See 34 CFR Part 30.) To date, the Impact Aid program has not exercised the authority described in these proposed regulations to offset against other programs and agencies.

I. Proposed Amendment to § 222.61 (Treatment of State Aid Programs in General)

This proposed amendment deletes an obsolete paragraph relating to payments for fiscal years prior to 1978 and transfers paragraph (c) from §§ 222.67 to 222.61(b) where it more appropriately fits. The language of existing § 222.67(c) is clarified, and a printing error is corrected. The current printed version of § 222.67 states that paragraph (c) applies to States that *do not* take into consideration payments under the Act in allocating State aid; however, this provision actually applies to States that *do* take into consideration payments under the Act in allocating State aid. (See 40 FR 19117, May 1, 1975 (NPRM).) Clarifying language is also added to this section to reflect the Department's policy that, in allocating State aid, States may not consider payments under the Act that LEAs may have been eligible for but did not actually receive because they did not apply for such payments. This provision applies whether or not a State qualifies under section 5(d)(2) to take payments under the Act into consideration when allocating State aid.

J. Proposed Technical Amendments to §§ 222.11, 222.14, 222.30, 222.31, 222.33, 222.35, 222.63, and 222.67

Amendments are proposed to make the language of § 222.11 consistent with that of § 222.10; to make the language of § 222.12 consistent with that of § 222.10 and § 222.11; to change the heading for § 222.14 to describe the text of that section more effectively; to clarify the language of § 222.30 and correct cross references in §§ 222.30 and 222.63; to remove repetitious language in § 222.31; to clarify the language of § 222.33 and make the language of §§ 222.33 and 222.35 consistent with that of § 222.36; and to conform the structure of § 222.67 with a change made in § 222.61.

K. Proposed Clarifying Amendments to §§ 222.9 and 222.17

Amendments are proposed to these sections to omit unnecessary wording and improve organization, respectively.

L. Proposed Subpart H (Provisions Related to Handicapped Children and Children With Specific Learning Disabilities)

Subpart H contains proposed regulations that govern the provision of additional payments to LEAs that provide free appropriate public education to handicapped children who are counted under section 3(d)(2)(C) of the Act. Most of the provisions in this subpart are contained in current regulations. The language of the current provisions has generally been edited to improve clarity.

LEAs should note that these regulations contradict a statement in the Conference report for the Hawkins-Stafford Amendments (H. Rept. 100–567). The Conference report states incorrectly that section 3(d)(2)(C) funds are not categorical funds and may be put in a general fund and expended for basic support. The Impact Aid statute and regulations state clearly that section 3(d)(2)(C) funds must be used for programs or projects designed to meet the special educational and related needs of handicapped children and children with specific learning disabilities counted under that section.

Proposed § 222.71 defines terms that specifically relate to section 3(d)(2)(C). Those terms are "free appropriate public education," "handicapped children," "preschool program," "related needs," and "related services." These definitions are included in the current regulations.

The term "free appropriate public education" has been revised to reflect a difference between the Impact Aid statute and the Education of the Handicapped Act. In 1978, Congress recognized some conflict between the definition of "free public education" in the Impact Aid statute and the requirement in the Education of the Handicapped Act to provide private schooling, if necessary, for handicapped children. In order to make the Impact Aid legislation compatible with the handicapped program legislation, Congress amended the definition of "average daily attendance" in the Impact Aid law to allow local educational agencies, for purposes of payments under section 3(d)(2)(C), to count handicapped students who are placed in schools outside the LEA. The Department interprets this legislative amendment to mean that an LEA that receives section 3(d)(2)(C) funds is exempted from meeting the public supervision and direction requirement in the Impact Aid statute in the definition of "free public education" for handicapped children placed in or referred to private schools or institutions by the LEA, so long as the LEA provides tuition for such placements. Changes have been made in other definitions to conform them to the current wording of the definitions in the Education of the Handicapped Act and the regulations that implement that Act (34 CFR Part 300).

Proposed § 222.72 (currently § 222.71) describes when an LEA may count a handicapped child under section 3(d)(2)(C). The current language of § 222.71 has been edited for clarity. Also, related requirements contained in several other sections of the current regulations have been grouped together in this section for the convenience of applicants, e.g., §§ 222.72(b) and 222.78.

Section 222.73 of the proposed regulations lists the assurances and certifications that LEAs are required to

provide for handicapped children claimed under section 3(d)(2)(C). Changes have been made to make the current language more concise. One provision currently contained in § 222.72(c) is now incorporated in § 222.73, which is a more logical location.

Proposed § 222.74 describes the restrictions and requirements that apply to the use of the additional payments received by an applicant under section 3(d)(2)(C). Much of the current language of this section has been edited to make it clearer and more concise. In addition, two substantive changes have been made.

The first of these substantive changes is the removal of the requirement that section 3(d)(2)(C) funds be obligated and expended by the end of the fiscal year following the fiscal year for which the funds were appropriated. Delays in the submission of final revenue and expenditure data for a number of school districts, and limited staff resources for field reviews to verify the accuracy of data submitted by LEAs on their applications, extend the time required to determine final payment amounts for all section 3 recipients. As a result, many LEAs will not have received all of their section 3(d)(2)(C) funds by the end of the second fiscal year.

This two-year obligation period was initially added to these regulations in an attempt to be consistent with 20 U.S.C. 1225b. However, that statute, also known as the Tydings Amendment, has been interpreted since its enactment in 1970 to apply only to State formula grant programs. Unlike State formula grant programs, the Impact Aid program has no requirement for the period during which funds must be obligated by recipients. Therefore, there is no reason that the Tydings Amendment would be needed to expand the period for expenditures by recipients. For this reason, and to avoid the practical problems noted above, the Department believes that this provision should be removed from the Impact Aid regulations. The Department intends this removal to apply retroactively so that no school district will lose funds as a result of the current regulatory provision.

The other substantive change to this section is the inclusion in paragraph (d) of specific guidance to LEAs on acceptable methods for accounting for the receipt (or credit) and expenditure of section 3(d)(2)(C) funds. This guidance is consistent with the current policy of the Department. An LEA must follow these guidelines to show that the section 3(d)(2)(C) funds it received were spent for their intended purpose. If section 3(d)(2)(C) funds due to an applicant are used to offset an overpayment, the applicant must still account for the expenditure of those funds for section 3(d)(2)(C) purposes. LEAs must return any section 3(d)(2)(C) funds that were not used for programs for federally connected, handicapped students.

Other changes to § 222.74 include the incorporation of provisions currently located in § 222.75 (a) and (c) of the subpart. These provisions are related to the subject of proposed § 222.74 and fit more logically in this section than in their current locations.

Proposed § 222.75 states that funds received under section 3(d)(2)(C) may not be taken into consideration in the distribution of State aid funds. This prohibition, which is contained in the current regulations, was incorporated in section 5(d) of the Act by the Hawkins-Stafford Amendments. Related language currently in § 222.74(e) has been moved to this section where it more logically fits. The current section has also been revised to condense and clarify the language.

Proposed § 222.76 specifies the situations or circumstances in which applicant LEAs may count children in private schools or programs for section 3(d)(2)(C) purposes. The language of § 222.76(b) is edited to clarify that an LEA may count a handicapped child under section 3(d)(2)(C) if the LEA finds that it is necessary to place the child in a residential program in order to provide special education and related services to the child. Section 222.76(c) has been edited to specify more clearly that children who have been placed in private schools by their parents may participate in public school programs using section 3(d)(2)(C) funds but that such children may not be counted by an LEA for purposes of section 3(d)(2)(C).

Section 222.77 of the proposed regulations lists other laws and regulations that apply to LEAs that receive section 3(d)(2)(C) funds. References have been updated to reflect changes in statutes and regulations, and a related paragraph that is currently § 222.70(a) has been incorporated in this section. The identification of specific sections in Parts 74, 75, and 77 that do not apply to section 3(d)(2)(C) has been omitted.

M. Proposed Amendment to § 222.81 (Free Public Education)

The proposed amendment implements a provision of the Hawkins-Stafford Amendments that authorizes section 3 Impact Aid payments for children who are attending schools operated by the Bureau of Indian Affairs (BIA) funded under section 1128, the Indian School Equalization Program, of Pub. L. 95–561, but who are not themselves eligible to be claimed for funding under section 1128 (non-Indian children). These funds are intended to be used for tuition payments from the LEA to the BIA school. This is a change from current practice under which payments for such children are not authorized unless the educational program of the children attending the BIA school is under the supervision and direction of the LEA.

N. Proposed Subpart K (Provisions for Section 3(d)(2)(B))

Subpart K contains regulations that explain how the Department implements section 3(d)(2)(B) of the Act. In addition to implementing section 3(d)(2)(B), proposed §§ 222.124 through 222.129 (provisions regarding reasonable tax effort) also implement section 3(d)(3)(B)(ii) of the Act. Section 3(d)(3)(B)(ii) directs the Secretary to increase the local contribution rate of an eligible LEA if the LEA's current expenditures are affected by unusual geographic factors. The Secretary is proposing as part of this NPRM to amend § 222.37, general provisions that govern the implementation of section 3(d)(3)(B)(ii), by adding a new paragraph (e) that cross references proposed §§ 222.124 through 222.129.

Section 222.121

Proposed § 222.121 explains that the Secretary determines an LEA's section 3(d)(2)(B) eligibility, entitlement, and payment based on final financial data for the applicant LEA's current fiscal year and final financial data for the prior fiscal year for the LEAs determined under § 222.36 to be generally comparable to the applicant LEA. The generally comparable LEAs' financial data are used to compute an average per pupil expenditure (APPE) figure, which is multiplied by the applicant LEA's total ADA and then compared to the applicant's available resources to determine the LEA's section 3(d)(2)(B) eligibility, entitlement, and payment. Because the generally comparable LEAs' data are for the prior year while the applicant LEA's data are for the current year, the generally comparable LEAs' data are adjusted to provide a fairer comparison. The adjustment is based on the change in the generally comparable LEAs' APPE from the second preceding fiscal year to the prior fiscal year. For example, if the generally comparable LEAs' APPE increased by five percent from fiscal year 1987 to fiscal year 1988, their 1988 APPE would be increased by five percent for purposes of determining the applicant LEA's eligibility and payment

under section 3(d)(2)(B) for fiscal year 1989. An LEA's fiscal year may differ from the Federal fiscal year; the required financial data relate to the LEA's fiscal year.

Section 222.122

Proposed § 222.122 describes the four statutory requirements that an LEA must meet in order to be eligible for section 3(d)(2)(B) assistance: (1) As determined under § 222.130, the LEA must not have sufficient funds to enable it to provide a level of education equivalent to that provided by its generally comparable LEAs; (2) the LEA must be making a reasonable tax effort (as further described in §§ 222.124 through 222.129) and must be exercising due diligence in availing itself of revenues derived from State and other sources; (3) at least half of the LEA's total number of children in average daily attendance during the LEA's current fiscal year, for whom the agency provided free public education, must be federally connected; and (4) the LEA's eligibility for State aid and the amount of that aid are determined on an equal basis with other LEAs in the State. Paragraph (a) explains that the Department defines the term "level of education" to mean "average per pupil expenditure amount." This reflects current Department practice.

Section 222.123

In addition to the requirements in proposed § 222.122, an LEA must meet requirements in § 222.123 to be eligible for assistance under section 3(d)(2)(B). Proposed § 222.123 provides that an LEA is not eligible for section 3(d)(2)(B) assistance if: (1) The LEA is in a State that has an equalized program of State aid that meets the requirements of section 5(d)(2) of the Act, and (2) the State takes into consideration the LEA's regular section 3 payments or section 3(d)(2)(B) payments in determining that LEA's eligibility for and amount of State aid.

If State aid were reduced based upon an LEA's receipt of section 3(d)(2)(B) funds, the section 3(d)(2)(B) funds would not be used for their intended purpose of supplementing other available revenue sources, including State aid. In addition, if State aid were reduced based upon the LEA's regular section 3 payments, the LEA would have less available State funds and therefore demonstrate a greater need for section 3(d)(2)(B) funds, resulting in an artificially inflated need. With one source of revenue decreasing as another increased, the LEA might never have sufficient funds to provide an equivalent level of education. In either case, the basic purpose of section 3(d)(2)(B) could not be fulfilled. The policy of proposed § 222.123 furthers the purpose of section 3(d)(2)(B) by ensuring that section 3(d)(2)(B) funds are made available to LEAs in genuine need of those funds. This is a change from current policy under which States may not consider payments under section 3(d)(2)(B) but may take into consideration regular section 3 payments.

Proposed §§ 222.124 through 222.129 contain uniform standards for determining whether a reasonable tax effort is being made by section 3(d)(2)(B) applicants. The legislative history states that LEAs must "make a showing that they both need and *deserve* the supplementary (section 3(d)(2)(B)) payments" (emphasis added) (S. Rept. 714, 83d Cong., 1st Sess. 7 (1953)). The Congress believed it would be unjustified for the Federal Government to provide additional assistance to a heavily impacted LEA if that LEA were not itself making a reasonable effort to raise local funds for education. In the Hawkins-Stafford Amendments, the Congress added a specific provision, which is reflected in these proposed regulations, stating that the Secretary shall consider an LEA's tax effort to be reasonable if its tax rate is at least 80 percent of the average tax rate of its generally comparable LEAs. This differs from current practice under which an LEA's tax rate must be at least equal to the average tax rate of its generally comparable LEAs. However, under § 222.132 of the proposed regulations, if an LEA's tax effort is less than that of its comparables, its section 3(d)(2)(B) payment is reduced proportionately.

Section 222.124

Proposed § 222.124 explains how the Secretary would determine whether a fiscally independent LEA (defined in § 222.3) is making a reasonable tax effort. One of the means usually used by a fiscally independent LEA to raise revenue for school purposes is the imposition of a tax levy on the taxable real property in the district. Paragraph (a) of proposed § 222.124 states that, in making a determination of reasonable tax effort, the Secretary compares the applicant LEA's real property tax rate or rates for school purposes with the tax rates of its generally comparable LEAs.

Paragraph (b)(1) of § 222.124 further explains that, if all real property is assessed for tax purposes at the same percentage of true value, the Secretary uses the actual tax rates of the applicant LEA and its generally comparable LEAs for the comparison. Sometimes, however, the real property in an applicant LEA is assessed at a different percentage of true value than the same kind of property in its generally comparable LEAs. In that case, as well as in other cases specified in these regulations, paragraph (b)(2) provides that the Secretary does not use the actual rates for comparison purposes, but rather uses rates computed in accordance with specific provisions of these regulations. This is because a common basis (i.e., tax rates reflecting a common percentage of true value) is needed in order to make a fair comparison of rates.

Paragraph (c) of proposed § 222.124 outlines two methods available to the Secretary for comparing tax rates. Paragraph (c)(1) provides that, if an LEA's tax rate (actual or computed) is equal to at least 80 percent of the average tax rate (actual or computed) of its generally comparable LEAs, the Secretary determines that the LEA is making a reasonable tax effort. The method described in paragraph (c)(2) applies only if the LEA and its generally comparable LEAs have two or more classifications of real property (e.g., both agricultural and commercial land) that are taxed at different rates. Under that method, the Secretary determines that the LEA is making a reasonable tax effort if each of its tax rates for each classification of real property is equal to at least 80 percent of each of the averages of the tax rates of its generally comparable LEAs for the same classification of property. As explained in the following paragraphs, in some situations the Secretary uses both methods of comparison in order to afford an LEA maximum opportunity to demonstrate reasonable tax effort.

Paragraphs (c) (3) and (4) of proposed § 222.124 describe two additional circumstances in which the Secretary would determine that an LEA is making a reasonable tax effort. Some States establish maximum rates that their LEAs can levy on real property. Therefore, paragraph (c)(3) provides that, if an LEA taxes all its real property at the maximum rate or rates allowed by the State, the Secretary considers that LEA to be making a reasonable tax effort. To ensure against the possibility that a State may set maximum rates only for LEAs that apply for Impact Aid, that paragraph further provides that State limitations on rates must apply uniformly to all LEAs in the State. Also, some LEAs have no taxable real property at all and therefore no tax rate, such as LEAs whose boundaries are coterminous with the boundaries of a Federal installation. Paragraph (c)(4) provides that the Secretary considers those LEAs to be making a reasonable tax effort.

Section 222.125

Determinations of reasonable tax effort, in some instances, may involve numerous computations. For example, tax rates may have to be computed for a large number of generally comparable LEAs. Under proposed § 222.125, any SEA with an LEA applying for section 3(d)(2)(B) assistance is responsible for providing the Secretary with the information necessary to determine compliance with the reasonable tax effort requirement, including any relevant tax rate computations required under the regulations. This would not be a new requirement. States are currently responsible for providing similar tax effort information. While the instructions contained in these proposed regulations may be more detailed and explicit than those with which States are currently required to comply, the information necessary to perform the computations, like the information necessary to compute local contribution rates, should be readily available to SEAs.

Section 222.126

Proposed §§ 222.126 through 222.128 describe the different tax rates the Secretary uses in making the comparison required for the reasonable tax effort determination and the necessary steps to compute those rates. Proposed § 222.126 describes the method required for establishing a common basis for comparison when the applicant LEA and its generally comparable LEAs have only one classification of property but the property is assessed at different percentages of true value. The example following proposed § 222.126 illustrates how, in a relatively simple situation, the Secretary determines whether an LEA is making a reasonable tax effort.

Section 222.127

Proposed § 222.127 describes several methods for computing tax rates that the Secretary uses in more complex situations to make the comparison required for the reasonable tax effort determination. An example of such a situation would be if an LEA and its generally comparable LEAs have more than one classification of real property (e.g., both agricultural and commercial property) taxed at different rates. Paragraph (a) of proposed § 222.127 governs the situation in which the applicant LEA's real property and the real property of its generally comparable LEAs is assessed at the same percentage of true value.

If, however, the real property of the LEA and its generally comparable LEAs is assessed at different percentages of true value, two different methods for computing tax rates and two different methods of comparison are available to the Secretary under this proposed section. First, under § 222.127(b), the Secretary uses tax rates computed in accordance with the method described in § 222.126, that is, tax rates computed for each classification of real property. If that method does not result in a positive determination of reasonable tax effort, the Secretary proceeds to use the method described in paragraph (c). The method in paragraph (c) is also used to compute a single tax rate if the applicant LEA's tax rates are each at least 80 percent of the average tax rates of the generally comparable LEAs but are different percentages of those LEAs' average tax rates.

Under paragraph (c), the Secretary computes only one rate for the LEA and one rate for each of its generally comparable LEAs, based on total revenues derived from local real property taxes for current expenditures for educational purposes. Tax rates computed in this fashion allow for a comparison of the LEA's computed tax rate with the average computed tax rate of its generally comparable LEAs. The example following proposed § 222.127 illustrates the situation in which the Secretary uses methods described in both paragraphs (b) and (c) to afford an LEA maximum opportunity to demonstrate reasonable tax effort.

Section 222.128

In a few States, a substantial portion of an LEA's revenues for current expenditures for education may be derived from local tax sources other than real property taxes. In such a State, the real property tax rate of an LEA may not itself be a good indication of the LEA's tax effort. Proposed § 222.128 would allow an SEA in such a State to request that the Secretary take those other local tax revenues into account in determining whether the LEA is making a reasonable tax effort. If the Secretary determines that it is appropriate to take those revenues into account, the Secretary uses computed rates based on total revenues derived from local tax sources for current expenditures, including local revenues other than from real property taxes.

Section 222.129

Proposed § 222.129 explains how the Secretary determines whether a fiscally dependent LEA is making a reasonable tax effort. Unlike a fiscally independent LEA, a fiscally dependent LEA is totally dependent on another governmental agency for its local revenues for education and, therefore, has no identifiable local real property tax rate for school purposes. The governmental agency from which the LEA obtains its support, referred to in these proposed regulations as the general government, may be the county, city, town, or other jurisdiction in which the LEA is located. Because the LEA cannot itself raise local funds for education, the Secretary, under § 222.129(b), imputes a rate based on the locally derived revenues made available or budgeted by the general government, whichever is higher, for the LEA's current expenditures. Under paragraph (d), as for a fiscally independent LEA, the Secretary compares the imputed tax rate of a fiscally dependent LEA with the average tax rate of its generally comparable LEAs to determine whether it is making a reasonable tax effort.

Section 222.130

Proposed § 222.130 describes how the Secretary determines whether, under § 222.122(d), an LEA lacks sufficient funds to enable it to provide a level of education equivalent to that provided by its generally comparable LEAs. This section reflects changes from current practice that result from provisions in the Hawkins-Stafford Amendments.

To make the determination of whether an LEA lacks sufficient funds, under § 222.130(a) the Secretary first computes the average per pupil expenditure of the generally comparable LEAs and multiplies that amount by the LEA's total ADA. The resulting product is considered the amount necessary to enable the LEA to provide a level of education equivalent to that provided by the generally comparable LEAs ("needed amount").

If the needed amount, less the LEA's section 3 *payment* for the current fiscal year and other funds available to the LEA for current expenditures, is greater than zero, the LEA would meet the lack of sufficient funds requirement under this proposed section. This calculation reflects a change from current practice under which an LEA's section 3 *entitlement* is subtracted from the LEA's needed amount. This change is a result of the Hawkins-Stafford Amendments, which revise language in section 3(d)(2)(B) from "the amount *computed* under paragraph (1)" (i.e., section 3 entitlement) to "the amount of *payment* resulting from paragraph (1)" (emphasis added).

In determining whether an LEA has sufficient funds, the Secretary allows the LEA to retain a portion or all of its "carryover funds" by disregarding that amount when identifying the funds available to the LEA for current

expenditures. This is because the Secretary assumes that, in a given fiscal year, an LEA would need to expend virtually every dollar of its operating revenues, including its section 3(d)(2)(B) funds, in order to provide a level of education equivalent to that provided by its generally comparable LEAs. Unless an LEA is allowed an amount of carryover funds in addition to the funds needed to provide an education equivalent to that of its comparable LEAs, the LEA may experience a cash-flow problem in the beginning of the following fiscal year.

The Hawkins-Stafford Amendments also revise section 3(d)(2)(E) of the Act to establish a new maximum amount of carryover funds to be disregarded when identifying an LEA's available funds. In accordance with this change, under paragraph (a)(4) of proposed § 222.130, the Secretary subtracts from the LEA's available funds the lesser of: (1) The LEA's actual opening balance; or (2) the maximum cash balance that State law allowed the LEA to carry over from the prior fiscal year to the current fiscal year or, if no State law governing cash balances exists, 30 percent of the LEA's total current expenditures for the prior fiscal year.

This treatment of carryover funds is a change from current practice. Currently, the portion of a district's actual carryover fund that is equal to or less than 10 percent of its total current expenditures for the current fiscal year is not counted as available funds for section 3(d)(2)(B) purposes.

Section 222.130 also contains in paragraph (c) definitions of terms that are used in the section. That paragraph specifies that the term "section 3 payment" means the total amount of an LEA's payments based on entitlements under sections 3(d)(1), 3(d)(2)(C)(i), and 3(d)(2)(D) of the Act. (Section 3(d)(1) defines basic entitlements for "a" and "b" children. Sections 3(d)(2) (C) and (D) provide for increased entitlements in the cases of certain federally connected, handicapped children and children residing on Indian lands, respectively.)

Paragraph (c) also defines the term "all other funds available to the LEA for current expenditures" to mean, generally, all funds received by an LEA for current expenditures from local, State, and Federal sources (other than any section 3 payments or section 3(d)(2)(B) payments received during the current fiscal year), plus the amount of the LEA's opening balance.

Section 222.131

Proposed § 222.131 implements the provision in the Act, as amended by Pub. L. 99-349 (July 2, 1986), that establishes a maximum amount of section 3(d)(2)(B) funds an LEA is entitled to receive and explains how the Secretary determines an LEA's maximum entitlement.

Prior to the amendments in Pub. L. 99-349, the Department calculated an LEA's maximum entitlement based on its total number of "a" children in ADA and on a percentage of the number of its "b" children in ADA. That policy was consistent with congressional actions over the years reducing Impact Aid payments for "b" children, including the enactment in 1984 of section 3(d)(2)(E)(ii), which reduced "b" entitlements to one-third of their previous full entitlements. Paragraph (b) of proposed § 222.131 implements the Pub. L. 99-349 amendment, effective beginning with FY 1986, requiring the Secretary to calculate an LEA's maximum entitlement based on its total number of both "a" and "b" children.

Section 222.132

Proposed § 222.132 explains how the Secretary determines the amount of section 3(d)(2)(B) funds that an eligible LEA receives. This amount is the lesser of the maximum entitlement amount determined under proposed § 222.131 or the needed amount determined under § 222.130(a)(3), i.e., the amount the LEA needs to enable it to provide a level of education equivalent to that provided by its generally comparable LEAs, except that an LEA's payment amount is reduced if the LEA's tax rate is less than 100 percent but at least 80 percent of the tax rate of its generally comparable LEAs.

Section 222.132 implements an amendment contained in Pub. L. 99-349 providing that the amount of an LEA's payment under section 3(d)(2)(B) is calculated based on the amount of its regular section 3 *payment*. Prior to the Pub. L. 99-349 amendment, the Act provided that the additional assistance under section 3(d)(2)(B) represented an increase to an LEA's regular section 3 *entitlement*. This statutory change, which is reflected in these proposed regulations, means that, if an LEA's payment under section 3 is less than its entitlement, the LEA may receive more section 3(d)(2)(B) funds for FY 1986 and beyond than it received for prior years.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Although these regulations may affect a number of small entities, i.e., LEAs with 1,500 students or less, the Secretary does not believe that the regulations will have a significant economic impact on a substantial number of these small LEAs.

Paperwork Reduction Act of 1980

Proposed §§ 222.9 through 222.11, 222.17, 222.22, 222.33, 222.36, 222.72, 222.74, and 222.125 through 222.129 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this proposed regulation to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary is particularly interested in receiving comments regarding the methods for accounting for the receipt and expenditure of section 3(d)(2)(C) funds for federally connected, handicapped children contained in § 222.74(d) and suggestions for possible alternative accounting methods. Written comments and recommendations may be sent to the Department of Education at the address given at the beginning of this document.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2079, FOB-6, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the requirements of Executive Order 12291 for reducing regulatory burden, the public is invited to comment on whether there may be further opportunities to reduce any regulatory burden found in these proposed regulations.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing, Reports and recordkeeping requirements.

Dated: March 16, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operation)

The Secretary proposes to amend Part 222 of Title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The authority for Part 222 is revised to read as follows:

Authority: 20 U.S.C. 236–241–1 and 242–244, unless otherwise noted.

1a. The Table of Contents for Part 222 is amended by revising Subpart H and by adding a new Subpart K to read as follows:

* * * * *

Subpart H—Provisions Related to Handicapped Children and Children With Specific Learning Disabilities

* * * * *

Subpart K—Provisions for Section 3(d)(2)(B)

* * * * *

2. Section 222.3 is amended by removing the definition of "working on Federal property," revising the definitions of "applicant" (and its authority citation), "application," and "uniformed services" (and its authority citation), and by adding new definitions for "federally connected children," "local educational agency," "membership," and "parent employed on Federal property" to read as follows:

§ 222.3 Definitions.

* * * * *

"Applicant" means any local educational agency that files an application for financial assistance under sections 2, 3, or 4 of the Act and the regulations in this part. For purposes of sections 3 and 4, a State educational agency may be an applicant only if the State agency directly operates and maintains facilities for providing free public education for the children it claims in its application.

(Authority: 20 U.S.C. 240(a) and 244(6))

"Application" means a properly completed and executed "Application for School Assistance in Federally Affected Areas" filed by an applicant requesting financial assistance under sections 2, 3, or 4 of the Act and the regulations in this part, including amendments to the application and any supporting documents indicated by the applicant.

* * * * *

"Federally connected children" refers to children described in subsection 3(a) or 3(b) of the Act.

(Authority: 20 U.S.C. 238)

* * * * *

"Local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public elementary or secondary education through grade 12 in a county, township, independent, or other school district located within a State. This term includes a State educational agency so long as it also directly operates and maintains facilities for providing free public education for the children it claims in its application. Children claimed by a State educational agency must actually be attending State-operated facilities, and the State educational agency may not, through a tuition arrangement, contract, or any other means, pay another entity to operate and maintain facilities for those children.

(Authority: 20 U.S.C. 244(6)).

"Membership" means—

(1)(i) The definition given to the term by State law; or

(ii) If State law does not define the term, the number of children listed on a local educational agency's current enrollment records on its survey date. The membership of children for whom the applicant is responsible for providing a free public education but who are attending schools other than those operated by the applicant, under a tuition arrangement described in § 222.81(d), must be included in the applicant's membership count.

(2) This term does not include children who—

(i) Have never attended classes in schools of the local educational agency or of another educational entity that the local educational agency has a tuition arrangement with;

(ii) Have permanently left the school district;

(iii) Otherwise have become ineligible to attend classes there; or

(iv) Attend the schools of the applicant under a tuition arrangement with another local educational agency that is responsible for providing them a free public education.

(Authority: 20 U.S.C. 238, 242(b), 244(10))

"Parent employed on Federal property" includes—

(1)(i) An employee of the Federal Government who reports to work on or whose place of work is located on Federal property;

(ii) A person not employed by the Federal Government but who spends more than 50 percent of his working time on Federal property (whether an employee or self-employed) when engaged in farming, grazing, lumbering, mining, or other operations that are authorized by the Federal Government, through a lease or other arrangement, to be carried out entirely or partly on Federal property; and

(iii) A portion, to be determined by the Secretary, of persons working on commingled Federal and non-Federal properties.

(2) This term does not include a person who reports to work at a work station not on Federal property but spends more than 50 percent of his working time on Federal property providing services to operations or activities authorized to be carried out on Federal property.

(Authority: 20 U.S.C. 236, 238, 242(b))

* * * * *

"Uniformed services" means the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

(Authority: 20 U.S.C. 238 and 37 U.S.C. 101)

3. Section 222.9 is revised to read as follows:

§ 222.9 Application form.

Any local educational agency (LEA) seeking financial assistance under sections 2, 3, or 4 of the Act shall, as a condition of entitlement, file with the Secretary an "Application for School Assistance in Federally Affected Areas." Each application must be transmitted through the State educational agency (SEA) and must contain information necessary to establish the LEA's entitlement under the Act and regulations. Copies of the application form may be obtained from the SEA.

(Authority: 20 U.S.C. 240(a))

4. Section 222.10 is revised to read as follows:

§ 222.10 Application filing requirements.

Beginning with fiscal year (FY) 1990, to be considered for financial assistance under section 2, 3, or 4 of the Act, an LEA must meet the following requirements:

(a) Except as provided in paragraphs (c) and (e) of this section, an LEA must—

(1) File its application for financial assistance under section 2, 3, or 4 with the Secretary on or before January 31 of the fiscal year for which assistance is sought; and

(2) Certify that it will file, and file, a copy of the application referred to in paragraph (a)(1) of this section with its SEA on or before January 31 of the fiscal year for which assistance in sought.

(b)(1) Except as provided in paragraphs (c) and (e) of this section, an SEA must notify the Secretary of any inconsistencies or other concerns it has with an LEA's application on or before February 15 of the fiscal year for which assistance is sought. If the Secretary does not receive any notification from an LEA's SEA by February 15, the Secretary assumes that the data and statements in the application are, to the best of the SEA's knowledge, true, complete, and correct.

(2) An application that is timely filed under paragraph (a)(1) of this section is not processed for payment until any concerns raised by the SEA are resolved.

(c)(1) If any of the following events, giving rise to eligibility or entitlement, occurs within the fiscal year for which assistance is sought, an LEA seeking assistance shall file an application within the time limits required by paragraph (b)(2) of this section:

(i) The United States Government initiates or reactivates a Federal activity, or acquires real property.

(ii) The United States Congress enacts new legislation.

(iii) A reorganization of school districts takes place.

(iv) Property, previously determined in writing by the Secretary not to be Federal property, is determined to be Federal property.

(2) Except as provided in paragraph (e) of this section, an LEA shall file an application as permitted by paragraph (b)(1) of this section as follows:

(i) The LEA shall file the application on or before January 31 of the fiscal year for which assistance is sought or within 60 days after the applicable event occurs, whichever date is later, but not later than September 30, the end of the Federal fiscal year.

(ii) The LEA shall also certify that it will file, and file, a copy of the application referred to in paragraph (c)(2)(i) of this section with its SEA on or before September 30 of the fiscal year for which assistance is sought.

(d)(1) Except as provided in paragraph (e) of this section, an SEA must notify the Secretary of any inconsistencies or other concerns with an LEA's application within fifteen days of the applicable filing date. If the Secretary does not receive any notification from the SEA, the Secretary assumes that the data and statements in the application are, to the best of the SEA's knowledge, true, complete, and correct.

(2) An application that is timely filed under paragraph (c)(2)(i) of this section is not processed for payment until any concerns raised by the SEA are resolved.

(e) If a filing date set forth in this section falls on a Saturday, Sunday, or Federal holiday, the deadline for filing an application is the next succeeding business day.

(f) To be timely filed under this section, an application must be—

(1) Received by the Secretary on or before the applicable filing date; or

(2) Bear a U.S. Postal Service postmark dated on or before that filing date.

(Authority: 20 U.S.C. 240(a))

Note to paragraph (f)(2): The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

5. Section 222.11 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 222.11 Amendments to applications: Filing dates.

(a) An LEA may amend its application following any of the events described in § 222.10(c) by submitting a written request to the Secretary and a copy to its SEA within 60 days after the applicable event occurs, or by the end of the Federal fiscal year for which assistance is sought, whichever is earlier.

(b) The LEA may also amend its application no later than the end of the Federal fiscal year for which assistance is sought—

* * * * *

6. Section 222.12 is revised to read as follows:

§ 222.12 Applications under sections 2, 3, and 4 received after deadlines.

The Secretary does not process for payment applications for assistance under sections 2, 3, and 4 of the Act that are not timely filed with the Secretary in accordance with the applicable filing dates established by §§ 222.10 and 222.11.

(Authority: 20 U.S.C. 240(a))

7. Section 222.14 is amended by revising the heading to read as follows:

§ 222.14 Membership data: General.

* * * * *

8. Section 222.17 is amended by revising the heading, introductory text, and paragraph (a) to read as follows:

§ 222.17 Alternative methods for counting federally connected children.

An applicant may use one of the two following methods to count federally connected children and to obtain the information described in the definition of "parent-pupil survey" in § 222.3:

(a) The applicant may determine federally connected membership by conducting a parent-pupil survey.

* * * * *

9. Section 222.22 is revised to read as follows:

§ 222.22 Calculation of ADA for an LEA's federally connected children for purposes of computing entitlements and payments under section 3.

(a) This section describes the manner in which the Secretary computes the average daily attendance (ADA) of federally connected children for each category in sections 3 and 4 of the Act—for the current fiscal year—in order to determine an applicant's entitlements under those sections.

(b) If an LEA is in a State that collects actual ADA data for purposes of distributing State aid for education, the Secretary calculates the ADA of that LEA's federally connected children for the current fiscal year by—

(1) Except as provided in paragraph (b)(2) of this section—

(i) Dividing the ADA of all the LEA's children for the prior fiscal year by the LEA's total membership on its survey date for the prior fiscal year (or, in the case of an LEA that conducted two membership counts in the prior fiscal year, by the average of the LEA's total membership on the two survey dates); and

(ii) Multiplying the figure determined in paragraph (b)(1)(i) of this section by the LEA's total membership of federally connected children in each subcategory described in section 3 of the Act on the LEA's survey date for the current fiscal year (or, in the case of an LEA that conducts two membership counts in the current fiscal year, by the average of the LEA's total membership of federally connected children in each subcategory on the two survey dates).

(2) (i) For purposes of this section, "actual ADA" means raw ADA data that have not been weighed or adjusted to reflect higher costs for specific types of students for purposes of distributing State aid for education.

(ii) If an LEA provides a program of free public summer school, attendance data for the summer session are included in the LEA's ADA figure in accordance with State law or practice.

(iii) An LEA's ADA count includes attendance data for children for whom it makes tuition arrangements with other educational entities.

(3) Applicants may not count attendance data for—

(i) Any child who is not physically present at school for the daily minimum time period required by the State, unless the child is participating via telecommunication or correspondence course programs that meet State standards or is being served by a State-approved homebound instruction program for the daily minimum time period appropriate for the child; or

(ii) Any child attending the schools of the applicant under a tuition arrangement with another LEA.

(c) If an LEA is in a State that does not collect ADA data for purposes of distributing State aid for education, the LEA or SEA shall submit data necessary for the Secretary to calculate the ADA of the LEA's federally connected children as follows:

(1) If an LEA is in a State that formerly collected ADA data for purposes of distributing State aid for education, the SEA may submit the total ADA and total membership data for the State for each of the last three fiscal years that ADA data were collected. The Secretary uses these data to calculate the ADA of the LEA's federally connected children by—

(i) Dividing the total ADA data by the total membership data for each of the three fiscal years and averaging the results; and

(ii) Multiplying the average determined in paragraph (c)(1)(i) of this section by the LEA's total membership of federally connected children in the current fiscal year as described in paragraph (b)(1)(ii) of this section.

(2) An LEA may collect and submit attendance data based on sampling during the prior fiscal year. The sampling must include attendance data for all children for at least 30 school days. The data must be collected during at least three periods evenly distributed throughout the school year. Each collection period must consist of at least five consecutive school days. The Secretary uses these data to calculate the ADA of the LEA's federally connected children by—

(i) Determining the ADA of all children in the sample;

(ii) Dividing the figure obtained in paragraph (c)(2)(i) of this section by the LEA's total membership for the prior fiscal year; and

(iii) Multiplying the figure determined in paragraph (c)(2)(ii) of this section by the LEA's total membership of federally connected children for the current fiscal year, as described in paragraph (b)(1)(ii) of this section.

(3) If an LEA is in a State that distributes State aid for education based on data similar to attendance data, the SEA may request that the Secretary use those data to calculate the ADA of the LEA's federally connected children. The Secretary determines whether those data are, in effect, equivalent to attendance data and, if so, allows use of the requested data and determines the method by which the ADA of the LEA's federally connected children will be calculated.

(Authority: 20 U.S.C. 238, 239, 240(a), 244(10))

10. Section 222.30 is amended by revising paragraph (a) and the introductory text of paragraph (c) to read as follows:

§ 222.30 Determination of local contribution rates: General.

(a) In order to compute the amount to be paid to an applicant local educational agency (LEA) under section 3 of the Impact Aid program, the Secretary—after consultation with the LEA and its State educational agency (SEA)—determines the LEA's local contribution rate.

* * * * *

(c) Except for § 222.32, the provisions in §§ 222.31 through 222.37 do not apply to applicant LEAs located in—

* * * * *

§ 222.31 [Amended]

11. In § 222.31, paragraph (a)(2) is removed and paragraph (a)(3) is redesignated as paragraph (a)(2).

12. Section 222.32 is amended by revising the introductory text of paragraph (a) and the authority citation and by adding a new paragraph (c) to read as follows:

§ 222.32 Local contribution rate guaranteed by the Act.

(a) Except as provided in paragraphs (b) and (c) of this section, the local contribution rate guaranteed by the Act is the greater of—

* * * * *

(c) (1) For FY 1988 and each fiscal year thereafter, the Act guarantees a special local contribution rate, as described in paragraph (c)(3) of this section, for certain LEAs whose boundaries are coterminous with the boundaries of a military installation ("coterminous LEAs").

(2) LEAs that qualify for the special guaranteed rate under paragraph (c)(3)

of this section include all coterminous LEAs except—

(i) Any coterminous LEA located in a State in which the State equalization law would prohibit the LEA from retaining the additional funds resulting from a rate described in paragraph (c)(3) or (c)(4) of this section; and

(ii) Any coterminous LEA located in a State in which the State law would require that State aid to the LEA for free public education be reduced in proportion to the additional funds resulting from a rate described in paragraph (c)(3) or (c)(4) of this section.

(3) For any coterminous LEA that qualifies under paragraph (c)(2) of this section, the Act guarantees a local contribution rate that is 70 percent of the average per pupil expenditure in all of the 50 States and the District of Columbia during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed unless that rate would raise the LEA's per pupil expenditure for the second preceding fiscal year above the State average per pupil expenditure for the second preceding fiscal year, in which case the LEA's rate is determined under paragraph (c)(4) of this section.

(4) If the rate described in paragraph (c)(3) of this section would raise the LEA's per pupil expenditure for the second preceding fiscal year above the State average per pupil expenditure for the second preceding fiscal year, then the LEA receives the greater of—

(i) The rate necessary to raise the per pupil expenditure for that LEA for the second preceding fiscal year to the average per pupil expenditure in the LEA's State for the second preceding fiscal year; or

(ii) The rate described in paragraph (a)(2) of this section.

(Authority: 20 U.S.C. 238(d)(3)(B) and (h))

13. Section 222.33 is amended by revising the introductory text of paragraph (a) and paragraphs (a)(2)(i) and (b)(2) to read as follows:

§ 222.33 Identification of generally comparable LEAs.

(a) If an LEA wishes to recommend to the Secretary a rate based on appropriate data from generally comparable LEAs within its State, the SEA for that State shall, except as provided in § 222.36, use data from the second fiscal year preceding the fiscal year for which the local contribution rate is being computed to group all of its LEAs, including all applicant LEAs, as follows:

* * * * *

(2) *Grouping by Grade Span/Legal Classification and Size.* (i) Divide all LEAs into groups by grade span (or the alternative grade-span groups described in paragraph (a)(1) of this section) and legal classification, if relevant and sufficiently different from grade span and size.

* * * * *

(b) * * *

(2) Except as provided in § 222.36, the SEA may not compute a local contribution rate for any group that contains fewer than 10 LEAs.

* * * * *

§ 222.35 [Amended]

14. The undesignated, introductory language of § 222.35 is amended by inserting after the word "Act" and before the comma, "and in § 222.36".

15. Section 222.36 is revised to read as follows:

§ 222.36 Determination of additional assistance.

(a) The provisions of this section govern an LEA that applies to the Secretary for assistance under section (3)(d)(2)(B) of the Act, in addition to its application for a regular payment under section 3.

(b) An LEA that applies for funds under section 3(d)(2)(B) may have its 3(d)(2)(B) eligibility and payment based on three comparable LEAs in its State. These three comparable LEAs are identified as follows:

(1) Using data from the prior fiscal year, the SEA first follows the directions in § 222.33(a)(4). The SEA then removes from the resulting list any LEAs that are heavily impacted, as described in § 222.33(b)(1), except the applicant LEA.

(2) If the remaining LEAs are not in rank order by ADA, the SEA shall list them in that order.

(3) The LEA may then select as its generally comparable LEAs for purposes of section 3(d)(2)(B) three LEAs that are adjacent to it in size (e.g., the next three larger LEAs, the next three smaller, the next two larger and the next one smaller, or the next one larger and the next two smaller).

(4) The Secretary uses the financial data of these three LEAs and the procedures in §§ 222.130 through 222.132 to determine whether the applicant LEA is eligible for funding under section 3(d)(2)(B) and, if so, the amount of that funding.

(c) If an LEA does not choose to exercise the option offered by paragraph (b) of this section and if it is applying for a regular payment under section 3 based on a local contribution rate guaranteed by the Act, the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers the LEA comparable to all LEAs in its State; and

(2) Uses prior year data and the procedures in §§ 222.130 through 222.132 to determine whether the applicant LEA is eligible for funding under section 3(d)(2)(B) and, if so, the amount of that funding.

(d) If an LEA does not choose to exercise the option offered by paragraph (b) of this section and if, in applying for a regular payment under section 3, it recommends a local contribution rate based on generally comparable LEAs in its State, the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers as comparable LEAs the same LEAs that the applicant identifies as comparable in its application for a regular payment under section 3; and

(2) Uses prior year data and the procedures in §§ 222.130 through 222.132 to determine whether the applicant LEA is eligible for funding under section 3(d)(2)(B) and, if so, the amount of that funding.

(e) If an LEA does not choose to exercise the option offered by paragraph (b) of this section and if, in applying for a regular payment under section 3, it recommends the "hold-harmless" rate described in § 222.31(d), the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers as comparable LEAs the group of LEAs that produces the highest regular section 3 rate under the generally comparable LEA method, as described in § 222.33; and

(2) Uses prior year data and the procedures in §§ 222.130 through 222.132 to determine whether the applicant LEA is eligible for funding under section 3(d)(2)(B) and, if so, the amount of that funding.

(Authority: 20 U.S.C. 238(d)(2)(B), 242(b))

16. Section 222.37 is amended by adding a new paragraph (e) to read as follows:

§ 222.37 Determination of compensation for unusual geographical factors.

* * * * *

(e) The Secretary does not provide compensation under section 3(d)(3)(B)(ii) unless an applicant is determined to be making a reasonable tax effort in accordance with §§ 222.124 through 222.129.

* * * * *

17. Section 222.42 is amended by revising paragraph (b) to read as follows:

§ 222.42 Adjustment for or recovery of overpayment.

* * * * *

(b) (1) If the LEA is not entitled to subsequent payments under the Act, the LEA shall promptly refund the amount of the overpayment to the Secretary.

(2) If the LEA does not promptly repay the amount of the overpayment or promptly enter into a repayment agreement with the Secretary, the Secretary may use the procedures set forth in the regulations contained in 34 CFR Part 30 to offset that amount against other Department programs or, under the circumstances permitted in Part 30, to request that another agency offset the debt.

* * * * *

18. Section 222.61 is amended by removing paragraph (a)(4) and by adding paragraphs (b) (4) and (5) to read as follows:

§ 222.61 Treatment of State aid programs in general.

* * * * *

(b) * * *

(4) No State, whether or not it has an equalization program that qualifies under § 222.62, may, in allocating State aid, take into consideration a local educational agency's eligibility or entitlement for payments under the Act if that local educational agency does not apply for and receive those payments.

(5) Any State that takes into consideration payments under the Act in accordance with the provisions of section 5(d)(2) in allocating State aid to local educational agencies must reimburse any local educational agency for any amounts taken into consideration for any fiscal year to the extent that the local educational agency did not in fact receive payments in those amounts during that fiscal year.

(Authority: 20 U.S.C. 240(d) (1) and (2))

§ 222.63 [Amended]

19. Section 222.63(a) is amended by removing "§ 222.62(a)(4)", in the first sentence, and inserting in lieu thereof "§ 222.62(d)".

§ 222.67 [Amended]

20. Section 222.67 is amended by removing paragraph (c) and by redesignating paragraph (d) as paragraph (c).

21. Subpart H (currently consisting of §§ 222.70 through 222.79) is revised to consist of new §§ 222.70 through 222.77 to read as follows:

Subpart H—Provisions Related to Handicapped Children and Children With Specific Learning Disabilities

§ 222.70 What are the scope and purpose of these regulations?

(a) The regulations in this subpart govern the provision of additional payments to local educational agencies (LEAs) that provide free appropriate public education to handicapped children who are counted under section 3(d)(2)(C) of the Act. See § 222.77 for other statutes and regulations that may be relevant.

(b) These regulations set forth the requirements, interpretations, and guidance necessary to implement section 3(d)(2)(C).

(Authority: 20 U.S.C. 238(d)(2)(C), 242(b))

§ 222.71 What definitions apply to this subpart?

In addition to the terms defined in § 222.3, the following definitions, which are generally the same as the definitions used in the Education of the Handicapped Act (20 U.S.C. 1401 *et seq.*) and in 34 CFR Part 300, apply to this subpart:

"Free appropriate public education" means special education and related services that—

(1) Are provided at public expense, without charge, and, except for services provided to children placed in or referred to private schools or facilities by their LEAs in accordance with § 222.76, under public supervision and direction;

(2) Meet the standards of the State educational agency (SEA), including the requirements of this part;

(3) Include preschool, elementary school, or secondary school education in the State involved; and

(4) Are provided in conformity with an individualized education program that meets the requirements under 34 CFR 300.340 through 300.349.

"Handicapped children" is defined in 34 CFR 300.5.

"Preschool program" means an educational or related program encompassing the educational level from a child's birth to the time at which elementary education is provided as determined under State law, provided that this program is recognized as free public education under State law.

"Related needs" means those needs related to a handicap or specific learning disability for which related services, in addition to direct instructional services, are deemed necessary so that the child may effectively participate in the instructional program of the LEA.

"Related services" means transportation and such developmental, corrective, and supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, counseling services, and medical services for diagnostic and evaluation purposes only) required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children. (See 34 CFR 300.13 for additional information.)

(Authority: 20 U.S.C. 238(d)(2)(C), 244(10); H. Rept. 1137, 95th Cong., Sess. 2d 104–105 (1978))

§ 222.72 What requirements must an LEA meet in order to count a handicapped child for purposes of section 3(d)(2)(C)?

(a) In order that a handicapped child may be counted for the purpose of an additional payment under section 3(d)(2)(C), a child must—

(1) Have a parent on active duty in the uniformed services, as defined in § 222.3, or reside on Indian lands, as described in section 403(1)(A) of the Act;

(2) Be receiving services suited to the child's special educational and related needs; and

(3) Be enrolled in a program (including a preschool program if appropriate) that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the child's special educational and related needs and is provided as part of free public education in the LEA.

(b) An LEA shall—

(1) State the number of handicapped children it counts under section 3(d)(2)(C) in its application filed in accordance with procedures set forth in subpart B of this part; and

(2) Meet the regular eligibility requirements of section 3(c) of the Act in order to receive an additional payment under section 3(d)(2)(C). (There is no minimum number of handicapped children who must be served in order for the LEA to receive the additional payment.)

(c) An LEA shall provide the assurances and certifications required under § 222.73.

(d) An LEA shall have in effect a written individualized educational program for each child counted under section 3(d)(2)(C). An LEA that satisfies the requirements of 34 CFR 300.340 through 300.346 for children counted under section 3(d)(2)(C) has satisfied the requirements of this paragraph.

(e) The program provided for the handicapped children counted under

section 3(d)(2)(C) must conform to State standards for programs for handicapped children and must encompass the specific educational and related needs of the children counted.

(Authority: 20 U.S.C. 238(a), (b), and (d)(2)(C), 240(f), 242; S. Rept. 1026, 93d Cong., 2d Sess. 159 (1974); *Chinle Common School District v. Mathews*, Civil No. 76-1273 (D.D.C. 1976))

§ 222.73 What assurances and certifications regarding handicapped children must an LEA provide in its application?

(a) *Size, scope, and quality of programs.* (1) An LEA shall provide an assurance that children counted under section 3(d)(2)(C) are receiving services in programs (including preschool programs) that are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational and related needs of these children. The Secretary considers any special education program serving the special educational needs of these children that conforms to the requirements for special education programs under Part B of the Education of the Handicapped Act as satisfying this assurance.

(2) The LEA shall also certify that its programs conform to State standards for programs for the types of children served.

(b) *Education of the Handicapped Act requirements.* (1) An LEA shall provide an assurance that its programs conform to the policies, procedures, and requirements of sections 612 and 613 of the Education of the Handicapped Act.

(2) The Secretary may consult with persons in charge of special education programs for handicapped children and children with specific learning disabilities in the SEA to determine whether State standards and programs conform to the policies and procedures required under sections 612 and 613 of the Education of the Handicapped Act.

(c) *Additional information.* The Secretary may require information in addition to that contained in the application in order to substantiate compliance with these assurances.

(Authority: 20 U.S.C. 238(d)(2)(C); H. Rept. 805, 93d Cong. 2d Sess. 43-46 (1974); S. Rept. 1026, 93d Cong., 2d Sess. 45 (1974); Cong. Record, daily ed., H7396, July 31, 1974)

§ 222.74 What restrictions and requirements apply to the use of the additional payments under section 3(d)(2)(C)?

(a) *General.* The additional payment to an LEA that is related to the increase in entitlement under section 3(d)(2)(C) (hereinafter "section 3(d)(2)(C) funds") must be used for programs and projects designed to meet the special educational and related needs of the handicapped children counted under that section.

(Authority: 20 U.S.C. 240(f))

(b) *Methods of obligation and expenditure of funds.* Obligations and expenditures of section 3(d)(2)(C) funds may be incurred in either of two ways:

(1) An LEA may obligate or expend the section 3(d)(2)(C) funds for the fiscal year for which the funds were appropriated.

(2) An LEA may reimburse itself for obligations or expenditures of local funds already made for the fiscal year for which the section 3(d)(2)(C) funds were appropriated.

(Authority: 20 U.S.C. 238(d)(2)(C), 240(f), 242(b))

(c) *Allowable expenditures.* An LEA shall use its section 3(d)(2)(C) funds for the following types of expenditures:

(1) Expenditures that are reasonably related to the conduct of programs or projects for the education of handicapped children. These expenditures may include program planning and evaluation but may not include the construction of school facilities.

(2) Acquisition cost (net invoice price) of equipment to meet the special educational and related needs of handicapped children. If section 3(d)(2)(C) funds are used for the acquisition of equipment and any financial advantage is realized through rebates, discounts, bonuses, free pieces of equipment not used in a program or project for the education of handicapped children, or other circumstances, the fair market value of that financial advantage is not an allowable expenditure and may not be credited as an expenditure of those funds. In no case may the section 3(d)(2)(C) funds be used to acquire equipment if the title to that equipment would be in a private school and not in the applicant agency.

(d) *Fiscal accountability requirements.* An LEA shall account for the use of the section 3(d)(2)(C) funds as follows:

(1) By recording, for each fiscal year, the receipt (or credit) of section 3(d)(2)(C) funds separately from other funds received under the Act, *i.e.*, on a line item basis in the general fund account or in a separate account.

(2) By demonstrating that, for each fiscal year, the total amount of expenditures from funds other than State funds or Federal Education of the Handicapped Act (EHA) funds for programs or projects serving federally connected, handicapped children is at least equal to the amount of section 3(d)(2)(C) funds received or credited for that fiscal year. This is done as follows:

(i) For each fiscal year, the amount of an LEA's total expenditures for programs or projects serving handicapped children is determined.

(ii) From the amount identified in paragraph (d)(2)(i) of this section, the amounts the LEA received for that fiscal year in State aid for handicapped programs and EHA funds are subtracted.

(iii) The amount determined in paragraph (d)(2)(ii) of this section is divided by the ADA of the total number of handicapped children the LEA served during that fiscal year.

(iv) The amount determined in paragraph (d)(2)(iii) of this section is then multiplied by the ADA of the LEA's federally connected, handicapped children for that fiscal year.

(3) If the amount of section 3(d)(2)(C) funds the LEA received (or was credited) for the fiscal year exceeds the amount obtained in paragraph (d)(2)(iv) of this section, an overpayment equal to the excess section 3(d)(2)(C) funds is established. This overpayment may be reduced or eliminated if the LEA chooses to and can demonstrate that its costs for serving federally connected, handicapped children exceeded its costs for serving non-federally connected, handicapped children.

(4) An LEA may use the following method to demonstrate that its costs for serving federally connected, handicapped children exceeded its costs for serving non-federally connected, handicapped children:

(i) The LEA determines the amount of expenditures from funds other than State and EHA funds for each handicapped program expenditure category (referred to in this section as "non-State/EHA handicapped expenditure"). For the purpose of this section, a handicapped program expenditure category means an expenditure category that is either common to all handicapped children, such as special education training or diagnostic services, or that is related to specific physical and learning disabilities, such as cerebral palsy or hearing, sight, reading, and speaking impairments.

(ii) The LEA divides the total expenditures of non-State/EHA funds for each expenditure category by the number of children enrolled in the handicapped program for which the expenditure was made.

(iii) The LEA then multiplies the resulting non-State/EHA average per pupil expenditure for each handicapped program expenditure category by the total number of federally connected children enrolled in the handicapped

program for which the expenditure was made. The LEA adds the resulting amounts to determine the total amount of non-State/EHA handicapped expenditures for the federally connected, handicapped children.

(iv) The LEA's overpayment established in paragraph (d)(3) of this section is reduced or eliminated to the extent that the amount obtained in paragraph (d)(4)(iii) of this section exceeds the amount obtained in paragraph (d)(2)(iv) of this section.

(Authority: 20 U.S.C. 238(d)(2)(C), 240(f), 242(b); H. Rept. No. 805, 93d Cong., 2d Sess. 45 (1974))

§ 222.75 How does section 3(d)(2)(C) relate to State aid programs?

Section 3(d)(2)(C) funds may not supplant any State funds that were or would have been available to the LEA for the free public education of children counted under section 3(d)(2)(C).

(a) No section 3(d)(2)(C) funds may be paid to an LEA whose per pupil State aid for federally connected, handicapped children, either general State aid or special education State aid, has been or would be reduced as a result of eligibility for or receipt of section 3(d)(2)(C) funds, whether or not a State has a program of State aid that meets the requirements of section 5(d)(2) of the Act and Subpart G of this part.

(1) A reduction in the per pupil amount of State aid for handicapped children, including children counted under section 3(d)(2)(C), from that received in a previous year raises a presumption that supplanting has occurred.

(2) The LEA may rebut this presumption by demonstrating that the reduction was unrelated to the receipt of section 3(d)(2)(C) funds.

(b) In any State in which there is only one LEA, all funds for handicapped programs other than funds from Federal sources are considered by the Secretary to be local funds.

(Authority: 20 U.S.C. 238(d)(2)(C), 240(d) and (f), 242(b))

§ 222.76 When may an LEA count children in private schools or residential programs for the purposes of section 3(d)(2)(C)?

(a) An LEA must have placed a handicapped child in, or referred a handicapped child to, a private school or facility under the policies and procedures required by section 613 of the Education of the Handicapped Act in order to count that child under section 3(d)(2)(C). Regulations implementing those policies and procedures are set forth in 34 CFR Part 300, Subpart D.

(Authority: 20 U.S.C. 244(10), 1413(a)(4)(B))

(b) If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the LEA may count that child under section 3(d)(2)(C). Regulations describing these placements are set forth in 34 CFR Part 300, Subpart C.

(Authority: 20 U.S.C. 244(10), 1401(9), (10), and (18), 1413(a)(4)(B))

(c) Children who have been placed in private schools by their parents may not be counted under section 3(d)(2)(C) but may participate in public school programs that use section 3(d)(2)(C) funds.

(Authority: 20 U.S.C. 238(d)(2)(C), 240(f); H. Rept. 805, 93d Cong., 2d Sess. 45 (1974))

§ 222.77 What other statutory and regulatory requirements are relevant to section 3(d)(2)(C)?

(a) *Applicability of the Education of the Handicapped Act and related regulations.* LEAs receiving section 3(d)(2)(C) funds are generally subject to the requirements of the Education of the Handicapped Act, as amended, and related regulations (20 U.S.C. 1401 *et seq.* and 34 CFR Part 300).

(b) *Applicability of general provisions regulations.* Relevant provisions contained in 34 CFR Parts 75, 77, and 80 are applicable to programs conducted with section 3(d)(2)(C) funds.

(Authority: 20 U.S.C. 242(b))

22. Section 222.81 is amended by revising paragraph (a)(4) and the authority citation to read as follows:

§ 222.81 Free public education.

(a) * * *

(4) Under public supervision and direction, except with respect to—

(i) Handicapped children; and

(ii) Children who are attending schools funded under section 1128 of Pub. L. 95–561 (the Indian School Equalization Program operated by the Bureau of Indian Affairs, Department of the Interior) but who are not eligible for funding under that section.

* * * * *

(Authority: 20 U.S.C. 238(d)(2)(D), 244(4))

23. A new Subpart K (§§ 222.120 through 222.132) is added to read as follows:

Subpart K—Provisions for Section 3(d)(2)(B)

§ 222.120 What are the scope and purpose of these regulations?

(a) The regulations in this subpart implement section 3(d)(2)(B) of the Act. Sections 222.124 through 222.129 also implement section 3(d)(3)(B)(ii) of the Act.

(b) The program authorized by section 3(d)(2)(B) provides financial assistance, in addition to regular payments under section 3 of the Act, to certain heavily impacted local educational agencies (LEAs) that demonstrate eligibility for that assistance.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.121 What financial data from LEAs are used to determine eligibility, entitlement, and payment under section 3(d)(2)(B)?

Final computations and determinations made with regard to an LEA's eligibility (§§ 222.122 through 222.130), maximum entitlement (§ 222.131), and payment (§ 222.132) under section 3(d)(2)(B) are based on final financial data for the LEA's current fiscal year and final financial data for the prior fiscal year of the LEAs determined under § 222.36 to be generally comparable to the applicant LEA (referred to in this part as "generally comparable LEAs").

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.122 What LEAs are eligible for financial assistance under section 3(d)(2)(B)?

Subject to § 222.123, an LEA is eligible for financial assistance under section 3(d)(2)(B) of the Act if the LEA is eligible for a regular section 3 payment, applies for assistance under section 3(d)(2)(B), and the Secretary determines that the LEA meets all of the following requirements:

(a) As determined under § 222.130, the LEA does not have sufficient funds to enable it to provide a level of education equivalent to that provided by its generally comparable LEAs. For the purpose of this subpart, "level of education" means average per pupil expenditure amount. (See § 222.131(a).)

(b) The LEA is making a reasonable tax effort in accordance with the requirements of §§ 222.124 through 222.129 and exercising due diligence in availing itself of revenues derived from State and other sources.

(c) At least 50 percent of the total number of children in average daily attendance (ADA) for whom the LEA provides free public education during its current fiscal year are federally connected children.

(d) The eligibility of the LEA for State aid and the amount of State aid are determined on a basis no less favorable than that for other LEAs in the State.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.123 How does a State's equalization program affect an LEA's eligibility for section 3(d)(2)(B) assistance?

The Secretary determines that an LEA is not eligible for financial assistance under section 3(d)(2)(B) if—

(a) The LEA is in a State that has an equalized program of State aid that meets the requirements of section 5(d)(2) of the Act; and

(b) The State, in determining the LEA's eligibility for or amount of State aid, takes into consideration the LEA's regular payments under section 3 or payments under section 3(d)(2)(B).

(Authority: 20 U.S.C. 238(d)(2)(B), 240(d)(2))

§ 222.124 How does the Secretary determine whether a fiscally independent LEA is making a reasonable tax effort?

(a) To determine whether a fiscally independent LEA, as defined in § 222.3, is making a reasonable tax effort as required by § 222.122, the Secretary compares the LEA's local real property tax rates for school purposes (referred to in this part as "tax rates"), as defined in § 222.3, with the tax rates of its generally comparable LEAs.

(b) For purposes of this section, the Secretary uses—

(1) Actual tax rates if all the real property in the LEA and its generally comparable LEAs is assessed at the same percentage of true value; or

(2) Tax rates computed under §§ 222.126 through 222.128.

(c) The Secretary determines that an LEA is making a reasonable tax effort if—

(1) The LEA's tax rate is equal to at least 80 percent of the average tax rate of its generally comparable LEAs;

(2) Each of the LEA's tax rates for each classification of real property is equal to at least 80 percent of each of the average tax rates of its generally comparable LEAs for the same classification of property;

(3) The LEA taxes all of its real property at the maximum rates allowed by the State, if those maximum rates apply uniformly to all LEAs in the State; or

(4) The LEA has no taxable real property.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.125 What information must be provided by the State educational agency?

The State educational agency (SEA) of any State with an LEA applying for assistance under section 3(d)(2)(B) shall provide the Secretary with relevant information necessary to determine whether the LEA is making a reasonable tax effort under §§ 222.126 through 222.129, whichever is applicable.

(Authority: 20 U.S.C. 238(d)(2)(B), 242(b))

§ 222.126 What tax rates does the Secretary use if real property is assessed at different percentages of true value?

If the real property of an LEA and its generally comparable LEAs consists of one classification of property but the property is assessed at different percentages of true value in the different LEAs, the Secretary determines whether the LEA is making a reasonable tax effort under § 222.124(c)(1) by using tax rates computed by—

(a) Multiplying the LEA's actual tax rate for real property by the percentage of true value assigned to that property for tax purposes; and

(b) Performing the computation in paragraph (a) of this section for each of its generally comparable LEAs and determining the average of those computed tax rates.

(Authority: 20 U.S.C. 238(d)(2)(B))

(Note.—The examples following both this section and § 222.127 will not appear in the Code of Federal Regulations.)

Example

An LEA has real property on its tax rolls consisting of only agricultural property. It taxes that property at a rate of 20 mills. That property is assessed for tax purposes at 40 percent of true value. All of its generally comparable LEAs also have only agricultural property on their tax rolls, but those LEAs assess the property at different percentages of true value, ranging from 30 percent to 50 percent. Under § 222.126(a), the LEA's tax rate is computed as follows:

Actual Tax Rate	×	Percentage of True Value	=	Computed Tax Rate
(20 mills	×	.40	=	8 mills)

Similarly, under § 222.126(b), the tax rate of each of its generally comparable LEAs is computed in accordance with the above formula, and an average is then taken of all of the computed tax rates of the generally comparable LEAs. Assume for purposes of this example that the average computed tax rate of the generally comparable LEAs is 6 mills. Since the applicant LEA's tax rate is greater than 80 percent of the average tax rate of its generally comparable LEAs, the Secretary determines under § 222.124(c)(1) that the LEA is making a reasonable tax effort.

§ 222.127 What tax rates does the Secretary use if two or more different classifications of real property are taxed at different rates?

If the real property of an LEA and its generally comparable LEAs consists of two or more classifications of real property taxed at different rates, the Secretary determines whether the LEA is making a reasonable tax effort under § 222.124(c) (1) or (2) by using one of the following:

(a) Actual tax rates for each of the classifications of real property.

(b) Tax rates computed in accordance with § 222.126 for each of the classifications of real property.

(c) Tax rates computed by—

(1) Determining the total true value of all real property in the LEA by dividing the assessed value of each classification of real property in the LEA by the percentage of true value assigned to that property for tax purposes and aggregating the results;

(2) Determining the LEA's total revenues derived from local real property taxes for school purposes;

(3) Dividing the amount determined in paragraph (c)(2) of this section by the amount determined in paragraph (c)(1) of this section; and

(4) Performing the computations in paragraphs (c) (1), (2), and (3) of this section for each of the generally comparable LEAs and determining the average of their computed tax rates.

(Authority: 20 U.S.C. 238(d)(2)(B))

Example

An LEA has on its tax rolls two classifications of real property that are taxed at different rates. Its agricultural property is assessed at 40 percent of true value and taxed at a rate of 20 mills, and its commercial property is assessed at 50 percent of true value and taxed at a rate of 25 mills. Similarly, its generally comparable LEAs have both agricultural and commercial real property assessed at varying percentages of true value and taxed at different rates.

In determining whether the LEA is making a reasonable tax effort, the Secretary uses tax rates computed in accordance with § 222.126 or paragraph (c) of § 222.127. Under the method described in § 222.126, the Secretary computes the LEA's tax rates as follows:

Actual Tax Rate for Agricultural Property	×	Percentage of True Value for Agricultural Property	=	Computed Tax Rate for Agricultural Property
(20 mills	×	.40	=	8 mills)

Actual Tax Rate for Commercial Property	×	Percentage of True Value for Commercial Property	=	Computed Tax Rate for Commercial Property
(25 mills	×	.50	=	12.5 mills)

The tax rates for both the agricultural and commercial property of each of the generally comparable LEAs are computed in accordance with the same formula. An average is taken of all of the computed tax

rates for the agricultural property of the generally comparable LEAs, and another average is taken of all of the computed tax rates for the generally comparable LEAs' commercial property. For purposes of this example, assume the average computed tax rate for the generally comparable LEAs' agricultural property is 7 mills, and the average computed tax rate for their commercial property is 16 mills. Under § 222.124(c)(2), the Secretary compares the computed tax rate for the LEA's agricultural property with the average computed tax rate of its generally comparable LEAs for agricultural property and the computed tax rate for the LEA's commercial property with the average computed tax rate of its generally comparable LEAs for commercial property. Although the computed tax rate for the LEA's agricultural property is greater than the average computed tax rate for the generally comparable LEAs' agricultural property, the computed tax rate for the LEA's commercial property is less than 80 percent of the average computed tax rate for the generally comparable LEAs' commercial property. Under this method, the LEA would not be considered to be making a reasonable tax effort.

If tax rates computed in accordance with § 222.126 do not establish that an LEA is making a reasonable tax effort, the Secretary computes tax rates under the alternative method described in paragraph (c) of § 222.127. For purposes of this example, the assessed value of the applicant LEA's agricultural property is $10,000,000, and the assessed value of its commercial property is $20,000,000.

The first step in computing tax rates under this method (§ 222.127(c)(1)) is illustrated as follows:

Assessed Value of Agricultural Property	=	True Value of Agricultural Property
Percentage of True Value for Agricultural Property		
($10,000,000	=	$25,000,000)
.40		

Assessed Value of Commercial Property	=	True Value of Commercial Property
Percentage of True Value for Commercial Property		
($20,000,000	=	$40,000,000)
.50		

True Value of Agricultural Property	+	True Value of Commercial Property	=	Total True Value of Property
($25,000,000	+	$40,000,000	=	$65,000,000)

The second step (§ 222.127(c)(2)) is illustrated as follows:

Assessed Value of Agricultural Property	×	Actual Tax Rate for Agricultural Property	=	Revenues for School Purposes Derived From Agricultural Property
($10,000,000	×	.020	=	$200,000)

Assessed Value of Commercial Property	×	Actual Tax Rate for Commercial Property	=	Revenues for School Purposes Derived from Commercial Property
($20,000,000	×	.025	=	$500,000)

Revenues for School Purposes Derived from Agricultural Property	+	Revenues for School Purposes Derived from Commercial Property	=	Total Revenues
($200,000	+	$500,000	=	$700,000)

The third step (§ 222.127(c)(3)) is illustrated as follows:

Total Revenues	=	LEA's Computed Tax Rate
Total True Value		
($700,000	=	.0108, or 10.8 mills)
$65,000,000		

Under § 222.127(c)(4), all three of the preceding steps are also performed for each of the generally comparable LEAs, and an average is then taken of all of the generally comparable LEAs' computed tax rates. Assume for purposes of this example that the average computed tax rate of the generally comparable LEAs is 12 mills. The Secretary compares the LEA's computed tax rate with the average computed tax rate of its generally comparable LEAs. Because the LEA's computed tax rate is at least 80 percent of the average computed tax rate of its generally comparable LEAs, the LEA is determined to be making a reasonable tax effort under § 222.124(c)(1). However, the LEA's payment must be reduced by the percentage that the average tax rate of the generally comparable LEAs exceeds the tax rate of the LEA. In this case, the generally comparable LEAs' average tax rate of 12 mills exceeds the LEA's tax rate of 10.8 mills by 11.11 percent (12/10.8=1.1111). Therefore, the 3(d)(2)(B) payment the LEA would otherwise be eligible for would be multiplied by .8889.

§ 222.128 What tax rates may the Secretary use if substantial local revenues are derived from local tax sources other than real property taxes?

(a) In a State in which a substantial portion of revenues for current expenditures for educational purposes is derived from local tax sources other than real property taxes, the SEA may request that the Secretary take those revenues into account in determining whether an LEA in that State is making a reasonable tax effort under § 222.124.

(b) If, based upon the request of an SEA, the Secretary determines that it is appropriate to take the revenues described in paragraph (a) of this section into account in determining whether an LEA in that State is making a reasonable tax effort under § 222.124, the Secretary uses tax rates computed by—

(1) Dividing the assessed value of each classification of real property in the LEA by the percentage of true value assigned to that property for tax purposes and aggregating the results;

(2) Determining the LEA's total revenues derived from local tax sources for school purposes;

(3) Dividing the amount determined in paragraph (b)(2) of this section by the amount determined in paragraph (b)(1) of this section; and

(4) Performing the computations in paragraphs (b) (1), (2), and (3) of this section for each of the generally comparable LEAs and determining the average of those computed tax rates.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.129 How does the Secretary determine whether a fiscally dependent LEA is making a reasonable tax effort?

(a) If an LEA is fiscally dependent, as defined in § 222.3, the Secretary compares the LEA's imputed local tax rate, calculated under paragraph (b) of this section, with the average tax rate of its generally comparable LEAs, calculated under paragraph (c) of this section, to determine whether the LEA is making a reasonable tax effort.

(b) The Secretary imputes a local tax rate for a fiscally dependent LEA by—

(1) Dividing the assessed value of each classification of real property within the boundaries of the general government by the percentage of true value assigned to that property for tax purposes and aggregating the results;

(2) Determining the amount of locally derived revenues made available by the

general government for the LEA's current expenditures for school purposes; and

(3) Dividing the amount determined in paragraph (b)(2) of this section by the amount determined in paragraph (b)(1) of this section.

(c) The Secretary performs the computations in paragraph (b) of this section for each of the fiscally dependent generally comparable LEAs and the computations in §§ 222.126 through 222.128, whichever is applicable, for each of the fiscally independent generally comparable LEAs and determines the average of all those tax rates.

(d) The Secretary determines that a fiscally dependent LEA is making a reasonable tax effort if its imputed local tax rate is equal to at least 80 percent of the average tax rate of its generally comparable LEAs.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.130 How does the Secretary determine whether an LEA lacks sufficient funds to enable it to provide a level of education equivalent to that provided by its generally comparable LEAs?

(a) The Secretary determines whether an LEA lacks sufficient funds to enable it to provide a level of education equivalent to that provided by its generally comparable LEAs, in accordance with § 222.122, as follows:

(1) First, the Secretary establishes the level of education equivalent to that provided by the LEA's generally comparable LEAs by—

(i) Computing the average per pupil expenditure (APPE) of the generally comparable LEAs by dividing the sum of the total current expenditures of those LEAs for their prior fiscal year by the sum of the total ADA of those LEAs for that prior fiscal year;

(ii) Increasing or decreasing the amount obtained in paragraph (a)(1)(i) of this section by the percentage the APPE of the generally comparable LEAs increased or decreased from their second preceding fiscal year to their prior fiscal year; and

(iii) Multiplying the amount determined in paragraph (a)(1)(ii) of this section by the LEA's total ADA for its current fiscal year.

(2) The Secretary next identifies the funds available to the LEA for current expenditures for its current fiscal year by—

(i) Adding the LEA's section 3 payment for the current fiscal year and all other funds available to the LEA for current expenditures for that current fiscal year; and

(ii) Subtracting from the amount obtained in paragraph (a)(2)(i) of this section the LEA's allowable carryover amount, which is that portion of the LEA's opening cash balance for the current fiscal year that does not exceed—

(A) The maximum amount of funds for current expenditures that the LEA was allowed by State law to carry over from the prior fiscal year to the current fiscal year, provided that State restrictions on carryover amounts were applied uniformly to all LEAs in the State; or

(B) If no State law governing cash balances exists, 30 percent of the LEA's "operating costs" for the prior fiscal year.

(3) The Secretary then subtracts the amount obtained in paragraph (a)(2)(ii) of this section from the figure computed in paragraph (a)(1)(iii) of this section.

(b) The Secretary determines that an LEA lacks sufficient funds to enable it to provide a level of education equivalent to that provided by its generally comparable LEAs if the amount determined in paragraph (a)(3) of this section is greater than 0.

(c) The following definitions apply to this subpart: "All other funds available to the LEA for current expenditures" means—

(1) All funds received by the LEA for current expenditures from local sources (or, in the case of a fiscally dependent LEA, all funds budgeted for or made available to the LEA, whichever is greater, by the general government) and from State and Federal sources, except any payments under section 3 or section 3(d)(2)(B) of the Act received during the current fiscal year and funds granted for the purpose of Chapter 1 or Chapter 2 of Title 1 of the Elementary and Secondary Education Act of 1965; and

(2) Funds on hand for current expenditures at the beginning of the current fiscal year ("opening cash balance").

"Operating costs" is given the same meaning as the term "current expenditures," which is defined in § 222.3.

"Section 3 payment" means the total payment based on the LEA's entitlements under sections 3(d)(1), (3)(d)(2)(C)(i), and 3(d)(2)(D) of the Act.

(Authority: 20 U.S.C. 238(d)(2)(B), (C)(i), and (D), 244(5))

§ 222.131 How does the Secretary determine an LEA's maximum entitlement under section 3(d)(2)(B)?

To determine the maximum entitlement under section 3(d)(2)(B) for an LEA that meets the requirements of § 222.122, the Secretary—

(a) Computes the average per pupil expenditure of the generally comparable LEAs in accordance with § 222.130(a)(1)(i) and (ii);

(b) Multiplies the amount determined in paragraph (a) of this section by the total ADA of the LEA's federally connected children; and

(c) Subtracts from the amount computed in paragraph (b) of this section the total amount of State aid received by the LEA for its federally connected children.

(Authority: 20 U.S.C. 238(d)(2)(B))

§ 222.132 How does the Secretary determine an LEA's payment under section 3(d)(2)(B)?

(a) Except as provided in paragraph (b) of this section, an LEA that meets the requirements of § 222.122 receives a payment under section 3(d)(2)(B) in an amount equal to the lesser of—

(1) The amount determined in § 222.130(a)(3); or

(2) The LEA's maximum entitlement determined under § 222.131 minus the amount of the LEA's section 3 payment for the current fiscal year.

(b) In the case of an LEA whose tax rate is at least 80 percent but less than 100 percent of the average tax rate of its generally comparable LEAs, the Secretary reduces the LEA's payment under section 3(d)(2)(B), as determined in paragraph (a) of this section, by the percentage that the average tax rate of the generally comparable LEAs exceeds the tax rate of the LEA.

(Authority: 20 U.S.C. 238(d)(2)(B))

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federal register

Thursday
March 23, 1989

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 48 and 52
Federal Acquisition Regulation (FAR); Value Engineering; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 48 and 52

Federal Acquisition Regulation (FAR); Value Engineering

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR Part 48 and the clause at 52.248–2. The changes clarify the application of Value Engineering (VE) to contracts for architect-engineering (A–E) services.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 22, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89–16 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The current VE clause for use in A–E contracts contains coverage very similar to that contained in the VE program clause for supply and service contracts. However, currently there is no sharing of VE savings in A–E contracts although sharing seems to be implied by some of the terms in the clause, such as Value Engineering Change Proposals (VECP) and VE Program, which have always been closely associated with sharing VE savings with the contractor. Savings are not shared because of the nature of A–E contracting. The method of performance of the work, the time involved by each professional discipline and the necessary incidental services required are all thoroughly discussed and negotiated before award of the contract. Any changes to these aspects of the contract are normally implemented by engineering change proposals.

FAR Part 48 and the clause at 52.248–2 is revised by deleting the terms VECP and VE Program as they related to A–E contracting, while still providing for a funded VE effort. This eliminates confusion, clarifies the application of VE provisions to A–E contracts, makes it clear that savings will not be shared, aligns policy with current practice, and considerably shortens the clause.

B. Regulatory Flexibility Act

The proposed FAR revisions are not considered to have a significant cost or administrative impact on contractors or offerors, because the changes only clarify existing policy. Therefore, publication for public comments is not required by Pub. L. 98–577, and a Regulatory Flexibility Analysis is not required by Pub. L. 96–354. However, as time permits, the changes are being promulgated as a proposed rule and public comments are solicited and will be considered in the formulation of a final rule. Comments for small entities concerning the affected FAR sections will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 89–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 48 and 52

Government procurement.

Dated: March 16, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 48 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 48 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 48—VALUE ENGINEERING

2. Section 48.001 is amended by adding in alphabetical order the definitions "Value engineering" and "Value engineering proposal" to read as follows:

48.001 Definitions.

* * * * *

"Value engineering," as used in this part, means an organized effort to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality, and safety.

* * * * *

"Value engineering proposal," as used in this part, means, in connection with an A–E contract, a change proposal developed by employees of the Federal Government or contractor value engineering personnel under contract to an agency to provide value engineering services for the contract or program.

2. Section 48.102 is amended by redesignating paragraph (h) as paragraph (i) and adding a new paragraph (h) to read as follows:

48.102 Policies.

* * * * *

(h) In the case of contracts for architect-engineer services, the contract shall include a separately priced line item for mandatory value engineering of the scope and level of effort required in the statement of work. The objective is to ensure that value engineering effort is applied to specified areas of the contract that offer opportunities for significant savings to the Government. There shall be no sharing of value engineering savings in contracts for architect-engineer services.

* * * * *

3. 48.104–1 is amended by adding paragraph (c) to read as follows:

48.104–1 Sharing acquisition savings.

* * * * *

(c) *Architect-engineering contracts.* There shall be no sharing of value engineering savings in contracts for architect-engineer services.

4. 48.201 is amended by revising paragraph (f) to read as follows:

48.201 Clauses for supply or service contracts.

* * * * *

(f) *Architect-engineer contracts.* The contracting officer shall insert the clause at 52.248–2, Value Engineering—Architect-Engineer, in solicitations and contracts whenever the Government requires and pays for a specific value engineering effort in architect-engineer contracts. The clause at 52.248–1, Value Engineering, shall not be used in solicitations and contracts for architect-engineer services.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.248–2 is revised to read as follows:

52.248–2 Value Engineering—Architect-Engineer.

As prescribed in 48.201(f) and (g), insert the following clause:

Value Engineering—Architect-Engineer (MAR 1989)

(a) *General.* The Contractor shall (1) perform value engineering (VE) services and submit progress reports as specified in the Schedule; and (2) submit to the Contracting Officer any resulting value engineering proposals (VEP's). Value engineering activities shall be performed concurrently with, and without delay to, the schedule set forth in the contract. The services shall include VE evaluation and review and study of design documents immediately following completion of the 35 percent design state or at such stages as the Contracting Officer may direct. Each separately priced line item for VE services shall define specifically the scope of work to be accomplished and may include VE studies of items other than design documents. The Contractor shall be paid as the contract specifies for this effort, but shall not share in savings which may result from acceptance and use of VEP's by the Government.

(b) *Definitions.* "Value engineering," as used in this clause, means an organized effort to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality, and safety.

"Value engineering proposal," as used in this clause, means, in connection with an A-E contract, a change proposal developed by employees of the Federal Government or contractor value engineering personnel under contract to an agency to provide value engineering services for the contract or program.

(c) *Submissions.* After award of an architect-engineering contract the contractor shall—

(1) Provide the Government with a fee breakdown schedule for the VE services (such as criteria review, task team review, and bid package review) included in the contract schedule;

(2) Submit for approval by the Contracting Officer, a list of team members and their respective resumes representing the engineering disciplines required to complete the study effort, and evidence of the team leader's qualifications and engineering discipline. Subsequent changes or substitutions to the approved VE team shall be submitted in writing to the Contracting Officer for approval; and

(3) The team leader shall be responsible for prestudy work assembly and shall edit, reproduce, and sign the final report and each VEP. All VEP's, even if submitted earlier as an individual submission, shall be contained in the final report.

(d) *VEP acceptance.* Approved VEP's shall be implemented by bilateral modification to this contract.

(End of clause)

[FR Doc. 89–6848 Filed 3–22–89; 8:45 am]
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federal register

Thursday
March 23, 1989

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 32, 45, and 52
Federal Acquisition Regulations (FAR); Advance Payments—Alternate Provision; Profits or Fees for Facilities Acquisition; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

Federal Acquisition Regulation (FAR); Advance Payments—Alternate Provision

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to provide an alternate contract clause for use when advance payments are authorized, but a special bank account is not authorized.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 22, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to:
General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW Room 4041, Washington, DC 20405.

Please cite FAR Case 89–17 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 32.409–3(e) currently permits contracting officers to omit the requirement for deposit of advance payments in a special bank account in connection with advance payment agreements with instrumentalities of the Government, States, local governments, or agencies or instrumentalities of State of local governments, if the official approving the advance payment determines that adequate security exists to protect the Government. Special bank accounts are also not required in connection with advance payments by letters of credit (see FAR 32.409–3(g)). FAR 32.412(f) authorizes contracting officers to omit the terms pertaining to a special bank account if the requirement for a special bank account is eliminated in accordance with FAR 32.409–3(e) or (g), but places the burden on contracting officers to delete the related language from the clause in FAR 52.232–12.

Since the deletion of language pertaining to special bank accounts is a complex task, the FAR Councils have decided to propose an alternate clause with pertinent language deleted to facilitate use of the option provided by FAR 32.409–3(e) and (g). No change in existing requirements is intended or made in this revision.

B. Regulatory Flexibility Act

The proposed change to 32.412(f) and 52.232–12 (Alternate V) are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because no changes to existing rules are being made. An alternate contract clause is being added to the FAR to facilitate use of a clause which current rules require contracting officers to modify on a case-by-case basis. Comments from small entities are invited.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: March 15, 1989.

Harry S. Rosinski,

Acting Director Office of Federal and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 32 and 52 be amended as set forth below:

1. The authority citation for 32 CFR Parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Section 32.412 is amended by revising paragraph (f) to read as follows:

32.412 Contract clause.

* * * * *

(f) If the requirement for a special bank account is eliminated in accordance with 32.409–3(e) or (g), the contracting officer shall insert in the solicitation or contract, the clause set forth in Alternative V of 52.232–12, Advance Payments, instead of the basic clause.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.232–12 is amended by adding Alternate V to read as follows:

52.232–12 Advance payments.

* * * * *

Alternate V (Mar 1989). If the requirement for a special bank account is eliminated in accordance with 32.408–3(e) or (g), insert the clause set forth below instead of the basic clause.

If the Alternate is used in combination with *Alternate II*, disregard the instructions concerning paragraph (c), *Use of funds*, in *Alternate II*; substitute paragraph (e), *Maximum payment*, in *Alternate II* for paragraph (d) below; and substitute paragraph (f), *Interest*, in *Alternate II* for paragraph (e) below and change the reference to paragraph (f)(3) in the first sentence of paragraph (f) of *Alternate II* to (e)(3).

If this Alternate is used in combination with *Alternate III*, insert the additional sentence set forth in *Alternate III* as the first sentence of paragraph (d) of this Alternate.

If this Alternate is used in combination with *Alternate IV*, insert the additional sentences set forth in *Alternate IV* as the beginning sentence of paragraph (e) of this Alternate.

Advance Payments Without Special Bank Account (Mar 1989)

(a) *Requirements for payment.* Avance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the contractor, and approval by the administering office, [*insert the name of the office designated under agency procedures*], or (2) under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed $_____. If a letter of credit is used, the Contractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering offices. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(b) *Use of funds.* The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and indirect costs. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of Part 31 of the Federal Acquisition Regulation.

(c) *Repayment to the Government.* At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements or the amount specified in paragraph (a) of this clause.

(d) *Maximum payment.* When the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed _____ percent of the contract price, the Government shall withhold further payments to the Contractor. On completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be paid to the Government on demand. For purposes of this paragraph, the contract price shall be considered to be the stated contract price of $_____, less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed $_____ [*insert an amount not higher than 10 percent of the stated contract amount inserted in this paragraph*]. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(e) *Interest.* (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate in subparagraph (e)(3) of this clause. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing charge—

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check;

(ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer; and

(iii) Liquidations by deductions from Government payments to the Contractor shall be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.

(2) Interest charges resulting from the monthly computation shall be deducted from payments, other than advance payments, due the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors, for experimental, developmental, or research work.

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the rate established by the Secretary of the Treasury under Pub. L. 92–41 (50 U.S.C. App., 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rate.

(4) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Contractor shall pay the remaining interest to the Government on demand.

(f) *Lien on property under contract.* (1) All advance payments under this contract, together with interest charges, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of the Contractor.

(2) The Contractor shall identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, the Government shall be considered to have a lien to the extent of the Government's interest under this contract on any mass of property with which the supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over the property on its books and records.

(3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor shall provide a copy of each receipt to the Contracting Officer.

(4) If, under the termination clause, the Contracting Officer authorizes the contractor to sell or retain termination inventory, the approval shall constitute a release of the Government's lien to the extent that—

(i) The termination inventory is sold or retained; and

(ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.

(g) *Insurance.* The Contractor represents and warrants that it maintains with responsible insurance carriers (1) insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plans and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workers' compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made under the contract have been liquidated, it will maintain this insurance; maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (f) of this clause; and furnish any certificates with respect to its insurance that the administering office may require.

(h) *Default.* (1) If any of the following events occurs, the Government may, by written notice to the Contractor, withhold further payments on this contract:

(i) Termination of this contract for a fault of the Contractor.

(ii) A finding by the administering office that the Contractor has failed to—

(A) Observe any of the conditions of the advance payment terms;

(B) Comply with any material term of this contract;

(C) Make progress or maintain a financial condition adequate for performance of this contract;

(D) Limit inventory allocated to this contract to reasonable requirements; or

(E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.

(iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.

(iv) The commission of an act of bankruptcy.

(2) If any of the events described in subparagraph (h)(1) of this clause continue for 30 days after the written notice to the Contractor, the Government may take any of the following additional actions:

(i) Charge interest, in the manner prescribed in paragraph (e) of this clause, on outstanding advance payments during the period of any event described in subparagraph (h)(1) of this clause.

(ii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(iii) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government claims against the Contractor.

(3) The Government may take any of the actions described in subparagraphs (h)(1) and (h)(2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(i) *Prohibition against assignment.* Notwithstanding any other terms of this contract, the Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

(j) *Information and access to records.* The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements, and, (2) if requested, other information concerning the operation of the contractor's business. The Contractor shall provide the authorized Government representatives proper facilities

for inspection of the Contractor's books, records, and accounts.

(k) *Other security.* The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor shall furnish additional security satisfactory to the administering office, to the extent that the security is available.

(l) *Representations and warranties.* The Contractor represents and warrants the following:

(1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.

(4) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.

(6) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current assignment of claims under any contract affected by these advance payment provisions.

(7) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

(8) These representations and warranties shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

(m) *Covenants.* To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, shall not—

(1) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notices, or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements reported to the administering office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities or any corporation, municipality, or Governmental authority, except direct obligations of the United States;

(6) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;

(7) Permit a writ of attachment or any similar process to be issed against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

(8) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office; accrue excess remuneration without first obtaining an agreement subordinating it to all claims of the Government; or employ any person at a rate of compensation over $_____ a year.

(9) Change substantially the management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor's business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Company.

(12) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;

(13) Make or covenant for capital expenditures exceeding $_____ in total;

(14) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than $_____; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract:

[*List the pertinent obligations*]

[FR Doc. 89-6831 Filed 3-22-89; 8:45 am]
BILLING CODE 6820-JC-M

48 CFR Part 45

Federal Acquisition Regulation (FAR); Profits or Fees for Facilities Acquisition

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to clarify FAR 45.302-3 because GAO and DoD IG studies have found that contractors are being paid fee or profit for facilities acquired for the Government when other-than facilities contracts are used. The regulations clearly prohibit payment of this kind on the facilities contracts but do not address this prohibition when other than facilities contracts are used to purchase facilities. The policy is that regardless of the type of contract used, fee or profit will not be paid for facilities purchased for the account of the Government.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 22, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to:
General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88-18 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed change to FAR 45.302-3 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it will eliminate the payment of profit/fee on the Government under other-than facilities contracts. There is no data available to calculate the magnitude of the impact. An Initial Regulatory Flexibility Analysis (IRFA) will be submitted to the Chief Counsel

for Advocacy of the Small Business Administration. A copy of the IFRA may be obtained from the FAR Secretariat, Attn: Margaret A. Willis, Room 4041, GS Bldg., 18th & F Streets, NW., Washington, DC 20405. Comments are invited. Comments from small entities concerning the affected FAR Section will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite Case 89–610 as pertains to Profits or Fees for Facilities Acquisition.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed change does not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: March 15, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Part 45 is amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for 48 CFR Part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 45.302–3 is amended by adding paragraph (c) to read as follows:

45.302–3 Other contracts.

(c) No profit or fee shall be allowed on the cost of the facilities when purchased for the account of the Government under other-than a facilities contract.

[FR Doc. 89–6832 Filed 3–22–89; 8:45 am]

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federal register

Thursday
March 23, 1989

Part VI

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Report; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1989.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of March 1, 1989 of six rescission proposals and 14 deferrals contained in the first three special messages of FY 1989. These messages were transmitted to the Congress by President Ronald Reagan on September 30 and November 29, 1988, and January 9, 1989.

Rescissions (Table A and Attachment A)

As of March 1, 1989, funds were being withheld related to two rescission proposals totaling $6.4 million pending before the Congress.

Deferrals (Table B and Attachment B)

As of March 1, 1989, $7,229.2 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1989.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 53, FR p. 39879, Wednesday, October 12, 1988.

Vol. 53, FR p. 49530, Wednesday, December 7, 1988.

Vol. 54, FR p. 1650, Friday, January 13, 1989.

Richard G. Darman,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1989 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by President Reagan.....	143.1
Not being withheld from obligation.....	-136.7
Accepted by the Congress.....	0
Rejected by the Congress.....	0
Pending before the Congress.....	6.4

****

TABLE B

STATUS OF 1989 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by President Reagan.....	8,942.5
Routine Executive releases through March 1, 1989 (OMB/Agency releases of $1,719.4 million and cumulative adjustments of $6.0 million)	-1,713.4
Overturned by the Congress.....	0
Currently before the Congress.....	7,229.2

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1989

As of March 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congression Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs:								
Subsidized housing programs.....	R89-1	20,000		1-9-89		(See note below.)		
Community Planning and Development:								
Urban development action grants.....	R89-2	51,651		1-9-89		51,651	2-28-89	
DEPARTMENT OF THE INTERIOR								
Fish and Wildlife Service:								
Land acquisition.....	R89-3	30,000		1-9-89		30,000	2-28-89	
National Park Service:								
Land acquisition and State assistance.....	R89-4	35,000		1-9-89		35,000	2-28-89	
DEPARTMENT OF JUSTICE								
Office of Justice Programs:								
Justice assistance.....	R89-5		5,000	1-9-89				
DEPARTMENT OF LABOR								
Employment Standards Administration:								
Black lung disability trust fund.....	R89-6		1,445	1-9-89				
TOTAL, RESCISSIONS.....		136,651	6,445			116,651		

NOTE. - The $20 million proposed for rescission in Rescission Proposal No. 89-1 was never withheld from obligation. Therefore, there was no need to release the funds.

Attachment B - Status of Deferrals - Fiscal Year 1989

As of March 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 3-1-89
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit	D89-11	4,122,750		11-29-88	750,000				3,372,750
Economic support fund	D89-01	592,760		09-30-88					
	D89-01A		2,054,000	11-29-88	901,036				1,745,724
Military assistance	D89-12	457,000		11-29-88	9,000				448,000
International military education and training	D89-13	37,400		11-29-88	37,400				0
Agency for International Development									
International disaster assistance	D89-14	18,125		11-29-88	15,164				2,961
Special Assistance for Central America									
Promotion of stability and security in Central America	D89-2	1,000		09-30-88					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D89-3	144,649		09-30-88	751				143,898
Cooperative work	D89-4	335,263		09-30-88					335,263
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D89-5	1,212		09-30-88					1,212
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Southwestern Power Administration, Operation and maintenance	D89-6	2,800		09-30-88					2,800

Attachment B - Status of Deferrals - Fiscal Year 1989

As of March 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 3-1-89
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction)	D89-7	6,745		09-30-88					6,745
DEPARTMENT OF JUSTICE									
Office of Justice Programs									
Crime victims fund	D89-8	90,000		09-30-88					90,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D89-9	26,135		09-30-88					
	D89-9A		27,000	11-29-88	6,001			6,001	53,135
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D89-10	823,608		09-30-88					
	D89-10A		202,084	11-29-88					1,025,692
TOTAL, DEFERRALS		6,659,446	2,283,084		1,719,352	0		6,001	7,229,179

[FR Doc. 89-6912 Filed 3-22-89; 8:45 am]
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federal register

Thursday
March 23, 1989

Part VII

Department of Education

34 CFR Part 212

Even Start Program; Final Regulations and Notice Inviting Applications

DEPARTMENT OF EDUCATION

34 CFR Part 212

Even Start

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The U.S. Secretary of Education (Secretary) issues regulations governing the Even Start program, which is authorized by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, in amendments to the Elementary and Secondary Education of Act of 1965. These regulations provide rules of general applicability for local educational agencies (LEAs) applying to the Secretary for funds under this program and establish procedures to govern implementation of the program if it changes from a direct grant program to a State-administered one, or *vice versa.*

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Thomas W. Fagan, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043), Washington, DC 20202–6132, Phone (202) 732–4682.

SUPPLEMENTARY INFORMATION: On October 25, 1988 the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (53 FR 43178) to implement the Even Start program. The NPRM explained significant provisions of the proposed regulations, specified contents of an application, and announced the Secretary's intent to reserve funds for the Migrant Education Even Start program and for evaluations. The significant regulatory provisions discussed included those governing eligible participants, continuation awards, and selection criteria.

The only major changes from the NPRM in these final regulations are the inclusion of a definition of "similar family-centered" services in the selection criterion "Percentage of eligible children and parents to be served" (§ 212.21(b)), a change in the selection criterion "Promise as a Model" (§ 212.21(e)) to give more emphasis to an applicant's preliminary evaluation plan, and changes in the allocation of points among the selection criteria in § 212.21.

The NPRM referred to a new process for appealing adverse agency decisions to an Office of Administrative Law Judges (53 FR 43178). For further information, refer to proposed regulations published in the **Federal Register** on December 2, 1988 (53 FR 48866). For information on the Migrant Education Even Start program, refer to the NPRM published in the **Federal Register** on December 21, 1988 (53 FR 51530).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 29 parties submitted comments on the proposed regulations. Many comments were favorable, with no suggested changes. An analysis of the other comments and of the changes in the regulations since the publications of the NPRM follows. Major issues are grouped according to the subject, with appropriate sections of the regulations referenced. Technical and other minor changes are not addressed.

Description of the Program Section 212.1

Comment: One commenter suggested the inclusion of language from section 1051 of the Act to more adequately describe the program.

Discussion: The Secretary agrees that addition of this language would be helpful.

Changes: Section 212.1 has been amended to include the language suggested by the commenter.

Eligibility Section 212.2

(a) Eligible Children

Comments: Several commenters objected to the provision in § 212.2(b)(2), restricting eligibility to those children residing in an elementary school attendance area designated for participation in the basic Chapter 1 program. Commenters noted that section 1055(2) of the Act does not specifically limit eligible attendance areas to elementary school attendance areas and argued that the Department should adopt the broader interpretation in order to extend the program's benefits to as many families as possible. One commenter specifically supported the restriction.

Discussion: In the preamble to the proposed regulations, the Secretary particularly invited comment on this issue. Three provisions of the Act, along with research on the needs of educationally disadvantaged children, lead the Secretary to retain the restriction that only children residing in participating elementary school attendance areas be eligible for Even Start.

Section 1055(2) of the Act limits eligibility to children ages 1–7. These children are properly considered as residing in an elementary school attendance area rather than a secondary school attendance area, because they would not be served by the secondary schools at their ages. It is thus appropriate to interpret the term "attendance area" in the Even Start statute to mean only elementary school attendance areas.

In addition, the Act further limits eligibility to those children, ages 1–7, residing in school attendance areas "designated for participation" in the basic Chapter 1 program. The limitation to participating, as opposed to eligible, Chapter 1 schools seems intended to ensure that Even Start be coordinated with the basic Chapter 1 program, as required by sections 1054(b)(7) and 1056(c)(6) of the Act. This coordination will occur and be most meaningful to the children if the attendance areas in which Even Start children reside are those of their elementary schools.

Further, section 1056(c)(5)(A) of the Act requires an applicant's plan to include methods to ensure that projects "will serve those eligible participants most in need of activities and services provided by this part." Elementary school attendance areas tend to target Chapter 1 services to the most needy areas more effectively, because in general they are smaller than secondary school attendance areas.

Finally, the Department has found that children who do not receive continued services, especially those children most in need, frequently do not sustain into the middle elementary grades the gains acquired in preschool programs. Although it is the of Even Start to enable children to succeed as learners in the regular classroom, by limiting Even Start eligibility to children residing in participating elementary school attendance areas, the Secretary ensures that basic Chapter 1 services will be available to Even Start participants if they need them.

Changes: None.

(b) Eligible Parents

Comments: One commenter was concerned that the eligibility requirement for parents would exclude those parents who are receiving mandated educational services through programs such as Aid to Families with Dependent Children (AFDC).

Discussion: Parents who are eligible for participation in an adult education program under the Adult Education Act

are eligible to receive Even Start services. The eligibility requirements of the Adult Education Act, set forth fully in the preamble to the Even Start NPRM, include as an eligible adult those "who are not enrolled in secondary school" and "who are not currently required to be enrolled in school." The latter phrase is interpreted to mean that only those who, because of their age, are required by State attendance laws to be enrolled in school, are ineligible for adult education programs. Therefore, a parent who is required to receive educational services through programs such as AFDC or the Job Training Partnership Act is not excluded from Even Start eligibility by the definition in the Adult Education Act.

Based on further internal review of the eligibility provision in § 212.2(b)(1), the Secretary has determined that the phrase "eligible for participation in an adult basic education program" might be confusing. The Adult Education Act no longer uses the term "adult basic education" but rather refers to "adult education." In order to avoid confusion between the eligibility requirement in the Adult Education Act and the Department's use of the phrase "adult *basic* education" (as opposed to other types of adult education), the Secretary is changing the language in § 212.2(b)(1) to be consistent with the current Adult Education Act.

Changes: The word "basic" has been deleted from the phrase "adult basic education program" in § 212.2(b)(1).

(c) Eligible Applicants

Comments: One commenter requested an emphasis in the regulations on collaboration, if appropriate, with institutions of higher education, community-based organizations, the appropriate State educational agency (SEA), or other appropriate nonprofit organizations.

Discussion: Although the Act requires the Secretary to award grants to a "local educational agency" (defined in section 1471 of the Act), sections 1054(a) and 1056(c)(4) of the Act provide that an applicant LEA shall, if appropriate, collaborate with institutions of higher education, community-based organizations, the appropriate SEA, or other appropriate nonprofit organizations.

Changes: Section 212.2 has been amended to provide that an eligible applicant shall have collaborated with these entities if appropriate.

Definitions Section 212.6

Comments: One commenter suggested defining the term "home-based program," which is used in section 1054(b)(6) of the Act. The commenter noted that the term may have different meanings in different locations.

Discussion: The Secretary recognizes that the term "home-based program" is not precise; in general, however, it is understood to mean programs that are provided to parents and children in their homes, as opposed to those in schools or centers to which participants must travel. While a regulatory definition would standardize the term for Even Start, the Secretary is concerned that such a definition may conflict with existing State or local laws, regulations, or policies. Therefore, the Secretary has not included a definition in the regulations.

Changes: None.

Selection Criteria Section 212.21

(a) Percentage of Eligible Children and Parents to be Served. § 212.21(b)

Comments: Two commenters objected to the language in the preamble stating that some Head Start participants may be considered unserved by similar family-centered projects (53 FR 43179). The commenters suggested that all Head Start participants be considered served because they receive family-centered services.

Discussion: The Even Start program contains some features that may not be included in other family-centered programs. The Even Start program is intended to help parents be their children's first teachers and become more literate in the process, rather than to teach parents and children in separate and distinct programs. Thus, Even Start projects must focus on the parents and children as a unit, include activities on which parents and children can work together, and provide services in the home if possible.

A definition of the term "similar family-centered services" will help applicants to decide, on a case-by-case basis, whether potential participants should be considered served or unserved. This will allow for a more accurate count of those actually receiving the same type of services that the Even Start program provides.

Changes: A definition of "similar family-centered services" for the purpose of these regulations has been added to the selection criterion in § 212.21(b).

(b) Promise as a Model Section 212.21(e).

Comments: One commenter requested stronger wording for the "willingness to serve as a model" element, § 212.21(e)(3).

Discussion: The Secretary believes that the criterion regarding willingness to serve as a model, as proposed, should be retained because it is not a program requirement; it is one element of the selection criterion.

Based on internal review, however, the Secretary has determined that the sub-element regarding project evaluations, § 212.21(e)(1), should contain a more explicit description of the contents of the preliminary evaluation plan or approach to be included in applications. This will provide more guidance to both applicants and the panel members. The Secretary has also determined that, due to the important role that evaluations play in a demonstration program such as this, this sub-element should be strengthened, and points transferred from the sub-element in paragraph (e)(2) of this section to that in paragraph (e)(1).

Changes: In § 212.21(e)(1), three elements of a preliminary evaluation plan are specified, and two points are added to this sub-element. Two points are removed from § 212.21(e)(2).

(c) Other Changes in Number of Points Assigned

Comments: Several commenters suggested giving more points to "percentage of eligible children and parents to be served," § 212.21(b). One commenter also suggested that more points be given within that selection criterion on a sliding scale that extends higher than 50 percent of the eligible children and their parents, rather than assigning the same point value to all applications that indicate serving more than 50 percent of eligible children and parents. One commenter suggested a shift in points from "degree of cooperation and coordination" to "percentage of eligible children and parents to be served." One commenter suggested increasing the number of points assigned to sub-elements (5) and (6) listed within "likelihood of success in meeting the Even Start goals," § 212.21(a). Another commenter gave a suggested breakdown in points among the sub-elements in the "reasonableness of budget" criterion, § 212.21(d).

Discussion: The Secretary has reconsidered the number of points assigned to each criterion, particularly those assigned to "percentage of eligible children and parents to be served." Given the specific requirement in section 1057(a) of the Act that this criterion be used, the Secretary agrees that it should be given more weight, and agrees that additional points be given for projects serving more than 50

percent of the unserved eligible population.

The Secretary believes that the number of points for the criterion "degree of cooperation and coordination" should not be reduced, inasmuch as many of the services Even Start will provide may also be supported with other funds, and by agencies other than LEAs. As shown by the legislative history of the statute, Congress intended this aspect of the program to be especially important. (H.R. Rep. No. 100–95, p. 15; S. Rep. No. 100–222, p. 31).

The points to be added to "percentage of eligible children and parents to be served" are most properly taken from "likelihood of success in meeting the Even Start goals," the most heavily weighted criterion. The Secretary believes that points have been properly allocated to sub-elements (5) and (6) of that criterion, and that the five points should be removed from sub-elements (1) and (2), both of which are broadly defined and were more heavily weighted.

The Secretary also does not believe that the points assigned to the "reasonableness of budget" criterion should be sub-divided among its sub-component items, because the points assigned to this criterion are so small. Further breakdown would not allow a sufficient range of points to provide adequate discrimination among applicants.

Changes: Five points are added to § 212.21(b), "percentage of eligible children and parents to be served." A new percentage cutoff and new percentage ranges are included in this paragraph. Five points are removed from § 212.21(a), "likelihood of success in meeting the Even Start goals."

(d) Other Suggested Changes

Comments: Commenters addressed five additional issues regarding selection criteria. (1) A few commenters suggested that coordination with State and locally funded programs be mentioned specifically in § 212.21(c). (2) Two commenters suggested the inclusion of references to pupil services and pupil services personnel in some of the selection criteria, and one commenter suggested the inclusion of references to enrichment activities. (3) One commenter suggested that § 212.21(a)(6) refer to instructional and developmental activities that are appropriate for children and parents, not just children. (4) One commenter suggested that the regulations recognize that adults participating in the program need instruction from persons with special skill in that field, as opposed to early childhood specialists who serve children.

Discussion: (1) The Secretary agrees that coordination with State and locally funded programs should be mentioned specifically, particularly because Congress intended for Even Start to "build on existing community resources . . ." (section 1051 of the Act). (2) The Secretary agrees that the inclusion of pupil services and enrichment activities may be appropriate for some Even Start projects; however, their inclusion in project design should be left to local discretion. (3) The Secretary agrees that instruction directed towards parents and their children may be different, and that activities should be appropriate for all participants. (4) The Secretary recognizes that different specialists may be needed to serve different age levels; this issue is addressed in § 212.21(a)(3) of the regulations. However, specific staffing patterns are left to local project discretion.

Changes: References to State and locally funded programs are added to §§ 212.21(c) (1) and (3). The word "children" in § 212.21(a)(6) is changed to "participants."

Urban-Rural Distribution Section 212.22

(a) Funding Mechanism

Comments: One commenter expressed concern that the mechanism of first funding the top-ranked urban and rural applications from each State could result in low-rated applications being funded from States from which all applications were rated low, whereas highly ranked, but not top-scoring, applications from other States would go unfunded. The commenter wanted to ensure that, while an equitable geographic distribution of grants is made, only highly qualified applicants will be funded.

Discussion: Section 212.22(b)(3) states that the Secretary will fund equal numbers of projects in each category *"provided there are sufficient acceptable applications in each category"* (italics supplied). By including the word "acceptable" here and in § 212.22(b)(3)(i) and (ii), the Secretary will ensure that a poor application is not selected, even if the application is the highest scoring one in a State.

Changes: None.

(b) Designation as Urban or Rural

Comments: None.

Discussion: Based on internal review, the Secretary believes that a clarification of urban LEA and rural LEA is necessary because the regulations do not address a situation in which an LEA contains areas that are within a Standard Metropolitan Statistical Area (SMSA) and areas that are not.

Changes: Section 212.22(c) has been amended to state that if an LEA encompasses areas both within and outside an SMSA, the LEA should designate the category (urban or rural) in which the majority of expected participants live. The application will then be placed in that category.

Transition Provisions Section 212.40

Comments: One commenter suggested that the regulations include a provision requiring the Secretary to notify SEAs of all grants to LEAs in their States and apprise SEAs annually of new awards and continuation awards.

Discussion: Although these regulations do not include provisions requiring the Secretary to notify SEAs of awards in their States, it is the intention of the Secretary to notify SEAs of grant awards, keep them apprised of grantees' progress, and provide necessary information on the transfer of administration to SEAs if that becomes necessary.

Changes: None.

Comments pertaining to statutory requirements

Comments: Many commenters requested changes concerning issues that are governed by statutory requirements. These include: creation of the Even Start program; the requirement that only LEAs (defined in section 1471 of the Act) are eligible to apply; the limitation on eligibility to residents of participating Chapter 1 attendance areas; the parent age limitations contained in the Adult Education Act; limitations on the Federal share of project costs; limiation of grants to four years; the requirement *of* a discretionary grant process from the Federal Government to LEAs; and the requirement that applicants give public notice and hold an open meeting before submitting an application (20 U.S.C. 3386).

In addition, several commenters suggested that the regulations specifically repeat certain statutory information. The suggested inclusions were: The declining Federal share of costs (section 1054(c) of the Act); the required program elements (section 1054(b) of the Act) and the other programs with which Even Start projects must coordinate (section 1054(b)(7) of the Act).

One commenter requested that the Department interpret the statutory requirement that grantees provide services to "special populations, such as individuals with limited English

proficiency and individuals with handicaps" (section 105(c)(5)(6) of the Act), to specifically require grantees to serve individuals who have not mastered standard English proficiency.

Discussion: The Secretary may not change statutory requirements. The Secretary realizes that Even Start applicants will need to refer to the statute. The application package will contain statutory requirements, including those mentioned by the commenters.

The statute provides two examples of "special populations" but does not limit "special populations" to those two. The Secretary does not wish to limit the phrase "special populations" for the purpose of this program by providing a further interpretation of the phrase in these regulations, but rather leaves to grantees the flexibility to serve different types of special populations. An applicant must set forth in its plan the methods to be used to serve those special populations (section 1056(c) of the Act).

Changes: None.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 212

Adult education, Education, Education of disadvantaged, Elementary and secondary education, Family, Family-centered education, Grant programs—education, Infants and children, Reporting and recordkeeping requirements.

Dated: March 6, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.213, the Even Start program.)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 212 to read as follows:

PART 212—EVEN START

Subpart A—General

Sec.

Subpart B—How Does an LEA or Consortium of LEAs Apply for a Grant?

Subpart C—How Does the Secretary Make a Grant?

New Grants

Continuation Awards

Subpart D—[Reserved]

Subpart E—Transition Provisions

Authority: 20 U.S.C. 2741–2749, unless otherwise noted.

Subpart A—General

§ 212.1 What is the Even Start program?

(a) The Even Start program grants funds to eligible local educational agencies (LEAs) for the Federal share of the cost of providing family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literacy training for their parents.

(b) The Secretary implements the Even Start program by assisting cooperative projects that build on existing community resources to create a new range of services, integrating early childhood education and adult education for parents.

(Authority: 20 U.S.C. 2741, 2744(a))

§ 212.2 Who is eligible for a grant?

(a) An applicant is eligible to receive assistance under the Even Start program if it—

(1)(i) Is an LEA that has within its geographic jurisdiction eligible participants, as defined in paragraph (b) of this section; or

(ii) Is a consortium of LEAs, each of which has within its geographic jurisdiction eligible participants; and

(2) Has collaborated regarding the proposed project with, if appropriate, institutions of higher education, community-based organizations, its State educational agency (SEA), or other appropriate nonprofit organizations.

(b) Eligible participants are—

(1) A parent of a child described in paragraph (b)(2) of this section, if the parent is eligible for participation in an adult education program under the Adult Education Act, 20 U.S.C. 1201(a)(1) and (2); and

(2) A child, age 1 to 7, inclusive, of any eligible parent, who resides in an elementary school attendance area designated for participation in programs under Part A of Chapter 1 of Title I of the Act.

(Authority: 20 U.S.C. 2742(a), 2744(a), 2745)

§ 212.31 What activities may the Secretary or States fund?

The Secretary or each SEA, as the case may be, funds family-centered education projects that comply with section 1054 of the Act, and that include all of the program elements required by section 1054(b) of the Act.

(Authority: 20 U.S.C. 2744)

§ 212.4 What is the duration of a project?

No LEA project may exceed four years.

(Authority: 20 U.S.C. 2747(d))

§ 212.5 What regulations apply?

The following regulations apply to the Even Start program:

(a) If the Secretary makes direct grants to LEAs under section 1052(a) of the Act, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85

(Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) If the Secretary makes grants to States under section 1052(b) of the Act, the EDGAR in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(c) The regulations in this Part 212.

(Authority: 20 U.S.C. 2831(a))

§ 212.6 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 1471 of the Act:

Elementary school
Equipment
Local educational agency
Parent
Secretary
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
Facilities
Fiscal year
Grant
Grant period
Grantee
Project

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Elementary and Secondary Education Act of 1965, as amended.

"State" means any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2742(c), 2831(a))

Subpart B—How Does an LEA or Consortium of LEAs Apply for a Grant?

§ 212.10 To whom does an LEA submit an application?

An applicant shall submit an application to the Secretary under section 1052(a) of the Act, in the form required by the Secretary, or to the SEA under section 1052(b) of the Act, in the form required by the State, as the case may be.

(Authority: 20 U.S.C. 2746(a))

§ 212.11 What requirements apply for submitting an application to the Secretary for a new grant?

Before submitting an application to the Secretary for a new grant under section 1052(a) of the Act, an applicant shall—

(a) Give reasonable notice of the general public's opportunity to testify or otherwise comment at an open meeting regarding the subject matter of the application;

(b) Hold the open meeting; and

(c) Consider comments obtained at the meeting in developing the final application.

(Authority: 20 U.S.C. 3386)

Subpart C—How Does the Secretary Make a Grant?

New Grants

§ 212.20 How does the Secretary evaluate an application for a new grant?

(a) *Review panel.* (1) The Secretary appoints a panel to review applications in accordance with section 1057 of the Act.

(2) In order for the applicant to be considered for a new grant, a majority of the panel members must agree, in accordance with section 1057(a)(5) of the Act, that the applicant has adequately demonstrated its ability to provide the additional funding required by section 1054(c) of the Act.

(3)(i) The panel evaluates an application for a new grant on the basis of the criteria in § 212.21.

(ii) The panel gives up to 100 points for these criteria.

(iii) The maximum possible score for each complete criterion in § 212.21 is indicated in parentheses.

(b) *Additional factors.* The Secretary then applies the additional considerations in § 212.22 to make grants.

(Authority: 20 U.S.C. 2747)

§ 212.21 What selection criteria are used in making new grants?

The following criteria are used to evaluate an application for a new grant:

(a) *Likelihood of success in meeting the Even Start goals* (35 total points). The Secretary reviews each application to determine the extent to which the proposed project will provide a family-centered education program that includes activities to promote literacy of participating parents, train parents to support the educational growth of their children, and prepare children for success in regular school programs. In applying this criterion the Secretary determines the extent to which the project described in the application—

(1) Contains clear, attainable, measurable objectives against which the progress and success of the project will be measured (5 points);

(2) Includes appropriate activities, services, and timelines to achieve those objectives (5 points);

(3) Designates responsibilities to specific personnel who are qualified to administer and implement the project and to provide special training necessary to prepare staff for the program (5 points);

(4) Includes an effective plan to ensure proper and efficient administration of the project (5 points);

(5) Is based on sound research in the areas of early childhood education, adult literacy, and parenting education (5 points);

(6) Contains instructional and developmental activities appropriate to the level of the participants to be served (5 points); and

(7) Provides for continuity of services to maintain progress by, for example, providing continuous services through the summer months (5 points).

(b) *Percentage of eligible children and parents to be served* (10 points). (1) The Secretary reviews each application to determine the total percentage of eligible children and parents that will be served under the proposed project. This percentage is determined by dividing the number of parents and children to be served by the project by the total number of eligible parents and children who are not currently receiving these or similar family-centered services.

(2) The Secretary gives points on the basis of that percentage, as follows:

more than 80%	10 points
70–79%	8 points
60–69%	6 points
50–59%	5 points
40–49%	4 points
30–39%	3 points
20–29%	2 points
1–19%	1 point

(3) As used in paragraph (b)(1) of this section, the term "similar family-centered services" means services that—

(i) Focus on the parents and children as a unit;

(ii) Are designed so that parents and children can work on activities together, with services provided in the home to the extent possible; and

(iii) Are designed—

(A) To help parents become full partners in the education of their children;

(B) To assist children in reaching their full potential as learners; and

(C) To ensure that parents are provided with literacy training.

(c) *Degree of cooperation and coordination* (30 total points). The Secretary reviews each application to determine the extent to which cooperation and coordination will take place in all phases of the proposed project among a variety of relevant service providers, including those funded under the programs listed in section 1054(b)(7) of the Act. The Secretary considers the extent to which—

(1) The applicant has made a survey of all relevant providers and is fully aware of similar and related services, including State and locally funded programs, being provided to eligible children and adults (5 points);

(2) The applicant has, in planning the project, engaged various providers in discussions that have resulted in firm agreements for specific cooperative activities (10 points);

(3) The plan of operation includes specific provision for additional cooperative efforts with other service providers, including State and locally funded providers, throughout the duration of the project (5 points); and

(4) Services offered by the applicant will build upon, but not duplicate, those being provided to project participants by the applicant or other service providers (10 points).

(d) *Reasonableness of budget* (10 points). The Secretary reviews each application to determine the extent to which the budget submitted for the entire cost of the proposed project appears reasonable, given the scope of the project. The Secretary considers the extent to which—

(1) Costs are reasonable in relation to expected outcomes;

(2) The applicant will make use of currently available resources such as facilities and equipment; and

(3) The budget provides sufficient information to support the requested amount of funds.

(e) *Promise as a model* (15 total points). The Secretary reviews each application to determine the extent to which the proposed project shows promise in providing a model that may be transferred to other LEAs. The Secretary considers the extent to which—

(1) The preliminary evaluation plan described in the application—

(i) Measures the progress and success of the project in achieving its clearly stated and attainable objectives;

(ii) Utilizes concrete and quantifiable means of measurement; and

(iii) Includes, if possible, comparisons with appropriate control groups (8 points);

(2) The general components of the project are readily understandable and usable by other entities, and are based on research or models that have proven to be adaptable to various circumstances (5 points); and

(3) The applicant shows a willingness to serve as a model and to disseminate detailed information about the project to the Department and to other LEAs (2 points).

(Authority: 20 U.S.C. 2744(b)(7), 2747, 2831(a))

(Approved by the Office of Management and Budget under control number 1810-0540.)

§ 212.22 What additional factors does the Secretary consider in making new grants?

(a) The Secretary, in approving grants, ensures that—

(1) Each project builds on existing community resources in a cooperative effort to create a new range of services integrating early childhood education and adult education for parents into a unified program; and

(2)(i) Grants are made to LEAs that are representative of urban and rural regions of the United States.

(ii) Grant funds are distributed equitably among the States, among urban and rural areas of the United States, and among urban and rural areas of a State.

(b) In order to meet the requirements of paragraph (a)(2) of this section, the Secretary—

(1) Separates applications into categories of "urban" and "rural" on the basis of paragraph (c) of this section;

(2) In each category—

(i) Determines the highest scoring application from each State and places these applications in order of their scores; and

(ii) Places all remaining applications in order of their scores; and

(3) Funds equal numbers of projects in each category provided there are sufficient acceptable applications in each category, by—

(i) First funding acceptance applications from paragraph (b)(2)(i) of this section in order of their scores; and

(ii) Then funding acceptable applications under paragraph (b)(2)(ii) of this section in order of their scores.

(c)(1) For the purpose of this section, urban LEAs are those within Standard Metropolitan Statistical Areas (SMSAs), as most recently designated by the United States Department of Commerce, Bureau of Census, and rural LEAs are those outside the boundaries of SMSAs.

(2) If an LEA includes areas both within the outside of an SMSA, the applicant shall designate the category in which the majority of expected participants reside.

(d) To the extent that acceptable applications are received from the various States, the Secretary does not give grants to LEAs in one State in amounts that, in total, exceed the amount that the State would be allocated under section 1053(b) of the Act if the appropriation for the Even Start program equals $50 million.

(Authority 20 U.S.C. 2741, 2747(a)(6), (c), (d)(2))

§§ 212.23—212.24 [Reserved]

Continuation Awards

§ 212.25 How does the Secretary make continuation awards if there are insufficient appropriations to fund all requests fully?

(a) If funds are insufficient for the Secretary to fund all continuation requests in the amounts at which each request would otherwise be funded ("approvable grant" amounts), the Secretary reduces the approvable grant awards for continuation requests on a *pro rata* basis.

(b) The Secretary does not reduce funding for a project for any fiscal year more than 25 percent below its approvable grant level, subject to paragraph (c) of this section.

(c) If funds are insufficient to fund all continuation awards at 75 percent of their approvable grant levels, the Secretary—

(1) Ranks all continuation requests based on the criteria in § 212.21, taking into account information collected throughout the project period, including yearly progress reports, the application submitted in the first year, and revisions to that application; and

(2) Funds continuation requests based on that rank ordering, at 75 percent of approvable grant levels until funds are exhausted.

(d) If the ranking procedure in paragraph (c) of this section does not result in the distribution of awards consistent with the requirements of § 212.22(a), the Secretary adjusts the selection process so as to meet those requirements.

(Authority: 20 U.S.C. 2831(a))

§ 212.26 What actions may the Secretary or an SEA take if a grantee does not make sufficient progress toward meting its project objectives?

If the Secretary or an SEA finds, after the first, second, or third year of a project, that the grantee has not made sufficient progress toward meeting its project objectives, the Secretary or SEA may—

(a) Approve revisions to the project, proposed by the LEA, if those revisions would enable the grantee to meet its project objectives; or

(b) After affording the LEA notice and an opportunity for a hearing, refuse to make a continuation award to the LEA for that project.

(Authority: 20 U.S.C. 2747(d)(1))

Subpart D—[Reserved]

Subpart E—Transition Provisions

§ 212.40 How are grants made in a fiscal year in which responsibility for making grants to applicants transfers between the Department and the SEAs?

If the responsibility for administering the Even Start program transfers from the Department to the SEAs, or *vice versa*—

(a) The Secretary applies—

(1) 34 CFR 75.253 with the exception of 34 CFR 75.253(a)(2);

(2) Section 212.26; and

(3) Section 212.25, if necessary;

(b)(1) An SEA shall continue a project grant for the total original period of time for which the grant was made if, for each project—

(i) The grantee shows that it is making sufficient progress toward meeting the objectives of the project;

(ii) The grantee meets applicable State requirements for continuation awards; and

(iii) Sufficient funds exist for the SEA to continue all project grants;

(2) For the project period, funds unobligated by a grantee in one project year remain with the grantee, and the SEA deducts from the subsequent year's continuation award an amount equal to the unobligated funds;

(3) After making continuation awards, the SEA shall use any remaining funds to make grants to new applicants; and

(c) The Federal share limitations contained in section 1054(c) of the Act are determined from the original year of the project grant award.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2747(d), 2831(a))

[FR Doc. 89-6939 Filed 3-22-89; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.213]

Even Start Program; Inviting Applications for New Awards for Fiscal Year (FY) 1989

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide Federal financial assistance to eligible local educational agencies for the Federal share of the cost of providing family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literacy training for their parents.

Deadline for Transmittal of Applications: May 26, 1989.

Deadline for Intergovernmental Review: July 26, 1989.

Available Funds: $14,079,000.

Estimated Range of Awards: $50,000 to $250,000.

Estimated Average Size of Awards: $185,000.

Estimated Number of Awards: 75.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Program), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), and (b) The regulations for this program in 34 CFR Part 212.

Program Description

The Even Start program, recognizing that some parents lack the skills needed to assist in early learning for their children, provides simultaneous educational services to children and parents. Eligible grantees are local educational agencies that have collaborated with appropriate nonprofit organizations. Eligible participants are children who reside in an elementary school attendance area designated for participation in the Chapter 1 basic program and their parents who are eligible for participation in an adult education program under the Adult Education Act.

The Secretary awards grants to local educational agencies for a period not to exceed four (4) years. The Federal share of the total cost of the grants will be not more than 90 percent in the first year, decreasing by 10 percent in subsequent continuation years to 60 percent in year four. In their applications, local educational agencies must demonstrate their ability to provide this additional funding.

The Secretary is required under section 1058 of the Act to provide for an annual independent evaluation of projects under Even Start. It is the intent of Congress that successful projects be considered for dissemination through the National Diffusion Network. In addition, for continuation of funding beyond year one, grantees are required to show progress toward meeting project objectives. Grantees shall cooperate with the Secretary to carry out these requirements by adopting an evaluation plan that is consistent with the Secretary's responsibilities under section 1058 of the Act and with the grantee's responsibilities under § 75.590 of EDGAR. It is not expected that the application will include a completed evaluation plan. However, the review panel's examination of the applicant's promise as a model, under § 212.21(e) of the regulations, will include an analysis of the approach the applicant expects to use to evaluate its project.

Applications must be complete in all respects to be reviewed and considered for funding.

Selection Criteria: Selection criteria for the Even Start program are found in the program regulations, 34 CFR 212.21 in this issue of the **Federal Register**.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA # 84.213, U.S. Department of Education, MS 6403, 400 Maryland Avenue SW., Washington, DC 20202–0125. Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.213), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.213), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (NOTE: ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.)

One or both of the following, as appropriate:

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Thomas W. Fagan, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., (Room 2043), Washington, DC 20202–6132, Phone (202) 732–4682.

Program authority: 20 U.S.C. 2741–2749.

Dated: March 17, 1989.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	*Preapplication*
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, state, and zip code)*:

Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 84.213

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A 102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges	XXXXXXXXXXX				
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges: (Not allowable by Section 1054(c) of the Act)

23. Remarks (Provide information on a separate page to justify the costs in each budget category in Section B)

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Not applicable to Even Start.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

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Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Not applicable to Even Start.

Line 23 – Provide any other explanations or comments deemed necessary.

Supplementary Instructions for SF 424A—Budget Information

Section B—Budget Categories

Enter the total fund (Federal) requirements by object class categories (6).

a. Personnel: Show the salary and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included on line f.

b. Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of the indirect cost rate.

c. Travel: Indicate the amount requested for travel of employees only.

d. Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $300 or more per unit.

e. Supplies: Include the cost of consumable supplies and materials to be used in the project. These should be items which cost less than $300 per unit with a useful life of less than two years.

f. Contractual Services: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (2) sub-grants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

g. Construction: Not applicable.

h. Other: Indicate all direct costs not clearly covered by lines a–f above.

i. Total Direct Costs: Show total for lines a–h.

j. Funds may not be used for indirect costs. (Section 1054(c) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 2744(c)).

k. Total Project Costs: Total as in (i).

Section C—Non-Federal Resources

Non-Federal Resources: Enter the dollar amount of funds to be provided from other sources, e.g., other Federal programs, but not Title I of Pub. L. 100–297, State governments, local governments, private organizations, etc. If in-kind contributions enter the dollar value of donated services and goods to be used to support the program or project.

Note: Public reporting burden for this collection of information is estimated to average 20 hours per response in the first year, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the U.S. Department of Education, Information Management and Compliance Division, 400 Maryland Avenue, SW., Washington, DC 20202–4651, and to the Office of Management and Budget, Paperwork Reduction Project (1810–0540) Washington, DC 20503.

Part III—Application Narrative

Before preparing the application narrative, applicants should read carefully the Even Start programmatic requirements in the Act, 20 U.S.C. 2741–48, and the applicable regulations (34 CFR Part 212). The narrative should encompass each function or activity for which funds are being requested and should be presented in the following sequence—

A. Begin with an abstract—a summary of the proposed project.

B. Describe a plan of operation containing the six items required in section 1056(c) of the Act, 20 U.S.C. 2746(c) as follows:

1. A description of the project goals and objectives. Express objectives in measurable terms against which the progress of the project can be evaluated.

2. A description of the activities and services that will be provided by the project. The seven program elements required by section 1054(b) of the Act, 20 U.S.C. 2744(b), must be included, as follows:

- The identification and recruitment of eligible children, including a description of the outreach methods to be used to identify families not currently associated with the schools of the LEA;
- Screening and preparation of parents and children for participation, including testing, referral to necessary counseling, and related services;
- Design of project and provision of support services (when unavailable from other sources) appropriate to the participants' work and other responsibilities, including—

—scheduling and location of services to allow joint participation by parents and children;
—child care for the period that parents are involved in the Even Start project; and
—transportation for the purpose of enabling parents and their children to participate in the Even Start project.

- The establishment of instructional programs that promote adult literacy, training parents to support the educational growth of their children, and preparation of children for success in regular school programs;
- Provision of special training to enable staff to develop the skills necessary to work with parents and young children in the full range of instructional services offered through Even Start (including child care staff in programs enrolling children of Even Start participants on a space available basis);
- Provision of and monitoring of integrated instructional services to participating parents and children through home-based programs; and
- Coordination of the Even Start project with programs assisted under Chapter 1 and any relevant programs under Chapter 2 of Title I of the Act, the Adult Education Act, the Education of the Handicapped Act, the Job Training Partnership Act, and with the Head Start program, volunteer literacy programs, and other relevant programs.

3. A description of the population to be served. (An estimate of the number of participants is to be provided in Part IV (B)).

4. If appropriate, a description of the collaborative efforts of the institutions of higher education, community-based organizations, the appropriate State educational agency, or other appropriate nonprofit organizations in carrying out the project for which assistance is sought;

5. A statement of the methods which will be used—

—To ensure that the project will serve those eligible participants most in need of the Even Start activities and services.
—To provide Even Start services to special populations, such as individuals with limited English proficiency and individuals with handicaps; and
—To encourage participants to remain in the project for a time sufficient to meet project goals; and

6. A description of the methods by which the applicant will coordinate the proposed Even Start project with programs under chapter 1 and chapter 2, where appropriate, of Title I of the Act, the Adult Education Act, the Job Training Partnership Act, and with Head Start programs, volunteer literacy programs and other relevant programs.

C. Complete the narrative by addressing each selection criterion in the order in which the criteria are listed in 34 CFR 212.21. Where appropriate the applicant should reference sections of the narrative and data sheets rather than repeat information here.

D. Include any other pertinent information that might assist the Secretary in reviewing the application.

E. Supply necessary data on the data sheets in Part IV.

It is recommended that the Application Narrative be limited to no more than 25 double-spaced, typed pages (on one side only). Supplemental documentation and data sheets, (D) and (E) above, should be appended to the narrative and need not be counted as part of the 25 pages.

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Part IV
EVEN START PROGRAM
Data Sheet

A. Information on additional funds

(1) Estimate the additional funds necessary to meet the requirements of section 1054(c) of the Act, which provides that the Federal share of the total cost of the project may be no more than 90% in the first year of the project, 80% in the second year, 70% in the third year, and 60% in the fourth and any subsequent year. Additional funds may be obtained from any source other than funds made available for programs under Title I of the Act.

Year	Requirement	Amount	Source of Funds
1	10%	$_____	_____
2	20%	$_____	_____
3	30%	$_____	_____
4	40%	$_____	_____

(2) If other Federal or State funds are listed as the source for additional funds, how will the applicant meet the requirements of section 1054(c) of the Act in the event that such Federal or State funds are not available?

_____
_____
_____
_____

B. Information on eligible participants.

1. Total number of eligible children and parents in applicant's Chapter 1 elementary attendance areas, not currently receiving family-centered services similar to those described in the Even Start statute, 20 U.S.C. 2741-48. (Refer to 212.21(b)(3) of the regulations for definition of "similar family-centered services"). . . . . _____

2. Number of eligible children and parents in (1) above to be served by this project. . . . . _____

3. Percentage of eligible children and parents described in (1) above to be served by this project [(2)÷(1)] . . . . . _____%

Describe the procedures used to determine the number of eligible children and parents not currently served in (1) above:

_____
_____

Part IV cont...

_____

_____

_____

_____

_____

Explain the rationale used to determine the number of children and parents to be served by this project in (2), above:

_____

_____

_____

_____

_____

_____

_____

C. Applicant represents [] urban [] rural area.

Check "urban" if the LEA is within a Standard Metropolitan Statistical Area (SMSA) as designated by the United States Department of Commerce, Bureau of Census. Check "rural" if the LEA is outside the boundary of a SMSA. If the LEA is within both designations, check the area in which the majority of paricipants reside.

Documentation

D. Attach documentation to demonstrate that the applicant has the qualified personnel required--
(1) to develop, administer, and implement the project, and
(2) to provide special training necessary to prepare staff for the project.

E. Attach documentation to demonstrate that the applicant has arranged for the services of an experienced evaluator to assist in the development of the applicant's evaluation plan and to coordinate that plan with the Secretary's independent evaluation.

F. Applicant certifies that an open meeting was held on _____, 19____ to provide the opportunity for the public to comment on the subject matter of this application.

_____

Authorized LEA representative Title Date

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED 80-0004

[FR Doc. 89-6940 Filed 3-22-89; 8:45 am]
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federal register

Thursday
March 23, 1989

Part VIII

The President

Federal Register
Vol. 54, No. 55
Thursday, March 23, 1989

Presidential Documents

Title 3—

The President

Proclamation 5944 of March 21, 1989

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1989

By the President of the United States of America

A Proclamation

Each year on March 25th, Americans gladly join in celebrating the anniversary of Greek independence—the national day of our long-time friends and allies. The ties between our two nations today have been woven throughout the centuries. Ancient Greece gave the world a profound appreciation for freedom, justice, and democratic government. Our Nation's Founding Fathers drew insight from the classical Greek philosophers, and our own struggle for independence was inspired by the democratic values the Greeks espoused. In 1821, less than a century after the American Revolution, American friends of Greece backed the Greek drive for nationhood. President James Monroe voiced our Nation's support for "the heroic struggle of the Greeks" during his seventh annual address to the Congress.

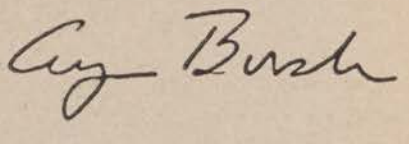
Greeks and Americans share contemporary bonds as well. Millions of Americans proudly claim Greek descent. Partners in NATO, our two nations are united in the common defense of liberty and democratic government.

On March 25th, one hundred and sixty-eight years ago, the Greek people began their struggle for nationhood and independence. By joining the Greek commemoration of that event, we remember the democratic values that Greece and the United States share and we rededicate ourselves to them.

The Congress, by Senate Joint Resolution 64, has designated March 25, 1989, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim March 25, 1989, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy, and I urge all Americans to join in appropriate ceremonies and activities to salute the Greek people and Greek independence.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of March, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-7125
Filed 3-22-89; 9:36 am]
Billing code 3195-01-M

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Executive Order 12672 of March 21, 1989

Interagency Committee on Handicapped Employees

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including section 501(a) of the Rehabilitation Act of 1973 (Public Law 93–112), as amended, it is hereby ordered that Section 1 of Executive Order No. 11830 of January 9, 1975, as amended, is further amended by substituting a new subsection (10) stating "Postmaster General of the United States Postal Service" for the current subsection (10) and adding a new subsection (11) stating "Chairman of the President's Committee on Employment of People with Disabilities" and a new subsection (12) stating "Such other members as the President may designate."

THE WHITE HOUSE,
March 21, 1989.

[FR Doc. 89–7146
Filed 3–22–89; 10:24 am]
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